

**PROVEN RESULTS: HIGHLIGHTING THE
BENEFITS OF CHARTER SCHOOLS
FOR STUDENTS AND FAMILIES**

HEARING

BEFORE THE

SUBCOMMITTEE ON EARLY CHILDHOOD,
ELEMENTARY, SECONDARY EDUCATION

OF THE

COMMITTEE ON EDUCATION AND THE
WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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PROVEN RESULTS: HIGHLIGHTING THE BENEFITS OF CHARTER SCHOOLS FOR STUDENTS AND FAMILIES

Wednesday, March 6, 2024

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY,
AND SECONDARY EDUCATION,
COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:15, a.m., 2175 Rayburn House Office Building, Hon. Aaron Bean (Chairman of the Subcommittee) presiding.

Present: Representatives Bean, Owens, McClain, Miller, Kiley, Williams, Foxx, Bonamici, Hayes, Bowman, Wilson, DeSaulnier, Norcross, and Scott.

Also present: Letlow

Staff present: Nick Barley, Deputy Communications Director; Mindy Barry, General Counsel; Isabel Foster, Press Assistant; Daniel Fuenzalida, Staff Assistant; Amy Raaf Jones, Director of Education and Human Services Policy; Georgie Littlefair, Clerk; RJ Martin, Professional Staff Member; Hannah Matesic, Deputy Staff Director; Audra McGeorge, Communications Director; Eli Mitchell, Legislative Assistant; Rebecca Powell, Staff Assistant; Brad Thomas, Deputy Director of Education and Human Services Policy; Maura Williams, Director of Operations; Nekea Brown, Minority Director of Operations; Rashage Green, Minority Director of Education Policy & Counsel; Christian Haines, Minority General Counsel; Stephanie Lalle, Minority Communications Director; Raiyana Malone, Minority Press Secretary; Veronique Pluviose, Minority Staff Director; Olivia Sawyer, Minority Intern; Clinton Spencer, IV, Minority Staff Assistant; Maile Sit, Minority Intern.

Chairman BEAN. Ladies and gentlemen, a very good morning to each of you. Welcome to your nation's capital, the House of Representatives, and the Subcommittee on Early Childhood, Elementary, and Secondary Education will come to order.

A quorum is present. Without objection, the Chair is authorized to call a recess at any time. It is a special time of year in our Nation's capital, and no, not because cherry blossom season is almost upon us, for children across the country trapped in failing school districts, this is the season of opportunity. Each year, in the spring, thousands of parents, families, and eager young students gather around their computers to wait and pray for a name to appear. The room is still. Parents sit quietly with bated breath. They know the

next few minutes could have a profound impact on the course of their children's lives.

A name appears and happiness erupts. A lucky winner has been picked, but with the good fortune comes the opportunity for a student to escape an abysmal traditional public school and enroll in a school that meets his or her individual needs. This is the story of our Nation's charter school lotteries.

The joy in a parent's heart is when their child is accepted is one of the foremost reasons that I support charter schools. I also recognize there is a flipside to the story, charter schools have limited seats in the lottery system, while fair, does not pan out for every family. For the smiles, there are tears. This is a sad reality, but it is not an argument against the schools.

On the contrary, it is an argument for expanding charter school access so that every child can receive a high-quality education no matter his or her zip code. Expand they have, charter schools are relatively new in terms of the American education system, with the first charter issued in Minnesota in 1992.

They have since ridden the school choice way to over 8,000 communities serving nearly 4 million students across 45 states. Furthermore, charter school growth is accelerating. Enrollment doubled in the most recent decade, and 74 percent of parents would consider sending their child to a charter school if just given the chance.

Charter schools' success is linked to thousands of success stories across the Nation. As studies and testimonies emerge from the first class of charter schools, they have proven what we all have expected. Removing the educational bureaucracy is a boon to student achievement.

Now, charter graduates have the chance to send their own children to charter schools, and I see it as the Committee's role, give them the best possible chance to do it. Today, we will embark on a journey to learn more about where charter schools are, how they are benefiting students, and to get more information.

With that, I yield to the Ranking Member for an opening statement. Ranking Member?

[The prepared statement of Chairman Bean follows:]

STATEMENT OF HON. AARON BEAN, CHAIRMAN, SUBCOMMITTEE ON EARLY
CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

This is a special time of year. No, not because cherry blossom season is almost upon us. For children across the country trapped in failing school districts, this is the season of opportunity.

Each year, in the spring, thousands of parents, families, and eager young students gather around their computers to wait—and to pray—for a name to appear.

The room is still. Parents sit silently with bated breath. They know the next few minutes could have a profound impact on the course of their children's lives.

A name appears, and happiness erupts. A lucky winner has been picked. With the good fortune comes the opportunity for a student to escape an abysmal traditional public school and enroll at a school that meets his or her individual needs.

This is the story of our nation's charter school lotteries. The joy in a parent's heart when his or her child is accepted is one of the foremost reasons that I support charter schools.

I also recognize there is a flipside to this story. Charter schools have limited seats, and the lottery system, while fair, does not pan out for every family.

For the smiles, there are tears. This is the sad reality, but it is not an argument against these schools. On the contrary, it is an argument for expanding charter

school access so every child can receive a high-quality education, no matter his or her zip code.

Expand they have. Charter schools are relatively new in terms of American education, with the first charter issued in Minnesota in 1992. They have since ridden the school choice wave to over 8,000 communities, serving nearly four million students across 45 states.

Furthermore, charter school growth is accelerating. Enrollment doubled in the most recent decade. Seventy-four percent of parents would consider sending their child to a charter school if given the chance.

The charter success story is linked to thousands of student success stories. As studies and testimonials emerge from the first class of charter schools, they have proven what we all expected—removing the education bureaucracy is a boon to student achievement.

Now, charter graduates have the chance to send their own children to charter schools. I see it as the Committee's role to give them the best possible chance to do so.

Ms. BONAMICI. Thank you very much, Chairman Bean. Thank you to our witnesses for being here today. As recognized by the founding fathers, numerous Supreme Court Justices and many State Constitutions, the provisions of a free, high quality, public education to all children, serves a compelling community interest.

Mr. Chairman, I see your scenario not as a case for more charter schools, but as a case for making all public schools the best they can be. When we invest in education, we are investing in our future. Members of this Committee should understand that children, regardless of where they live, or how involved their parents are, they deserve access to high quality, public education that allows them to achieve their full potential.

Now most agree that parents should have a say in their child's learning environment, and under some circumstances this may include well-regulated public charter schools. Well-funded, transparent, and accountable public charter schools in some instances may be a better fit for some students.

For example, KairosPDX is a charter school in Portland. They work to dismantle structural racism, close opportunity and achievement gaps for students of color, through hands on, culturally competent teaching.

Unfortunately charter schools are not subject to the same level of oversight and accountability as traditional public schools, and as a result we often do not know whether charter schools will provide the students with benefits, and any meaningful benefits.

Concerningly in many instances, charter school schemes are another way for my colleagues across the aisle to divert taxpayer dollars and community resources from already struggling public schools. Now, we must not ignore the growing number of charter schools that are operated by for-profit corporations, located in states that have lax, or even nonexistent oversight.

According to the Network for Public Education, more than 1,100 charter schools are now run by for-profit entities, and that is more than 14 percent of charter schools. Prior to the Education Department's updates to the Charter School Program, a 2016 audit found that charter school programs run by for-profit entities in California, Florida, Michigan, New York, Pennsylvania and Texas, all lacked internal guardrails that posed risks to student learning, and enabled waste, fraud, and abuse of Federal funds.

I also have serious concerns about the effects of charter school programs on students' civil rights. Although charter schools by law are required to honor students' and families' civil rights protections, such as individual education plans for students with disabilities. Gray areas surrounding a school's legal status may leave them ill-equipped to provide every student with the legally required fair and equitable education.

Studies show that charter schools are more segregated than traditional public schools. In addition, students may be rejected, unnecessarily disciplined, or expelled for reasons that would not be allowed in a traditional public school, often with few or no avenues for recourse.

Then there is the issue of the number of charter schools that close, often abruptly. In fact, about 25 percent of charter schools close within 5 years, leaving students and families without support, and sometimes without information. Often for-profit management, entities are based outside the bounds of Federal oversight, not really the choice parents are looking for.

Yes, parents should be able to decide the best way to educate their children, however this should not come at the expense of a strong quality public education system that protects and supports every child. That is why I ask that Committee members join me in supporting more Magnet schools, schools that provide choice within the public school system, and that come with accountability and nondiscrimination.

My home district in Beaverton, Oregon for example, offers some very popular options, an Arts Magnet, a Science and Engineering Magnet, an International Magnet. Instead of proposing an 80 percent cut to the Title I program, my colleagues should invest in public education and evidence-based choice programs, so that every family can send their child to a high quality, accountable, and safe public school.

Thank you to our witnesses for being here, and I yield back the balance of my time.

[The prepared statement of Ranking Member Bonamici follows:]

STATEMENT OF HON. SUZANNE BONAMICI, RANKING MEMBER, SUBCOMMITTEE ON
EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

Thank you, Chair Bean. Thank you to our witnesses for being here today.

As recognized by the Founding Fathers, numerous Supreme Court justices, and many state constitutions, the provision of free, high-quality public education to all children serves a compelling community interest. Mr. Chairman, I see your scenario not as a case for more charter schools but as a case for making all public schools the best they can be.

When we invest in education, we are investing in our future. Members of this committee should understand that children, regardless of where they live or how involved their parents are, deserve access to high-quality public education that allows them to achieve their full potential.

Now, most agree that parents should have a say in their child's learning environment—and under some circumstances, this may include well-regulated public charter schools. Well-funded, transparent, and accountable public charter schools, in some instances, may be a better fit for some students. For example, KairosPDX is a charter school in Portland. They work to dismantle structural racism and close opportunity and achievement gaps for students of color through hands-on, culturally competent teaching.

Unfortunately, charter schools are not subject to the same level of oversight and accountability as traditional public schools, and as a result, we often do not know whether charter schools will provide students with any meaningful benefits.

Concerningly, in many instances charter school schemes are another way for my colleagues across the aisle to divert taxpayer dollars and community resources from already struggling public schools.

Now, we must not ignore the growing number of charter schools that are operated by for-profit corporations located in states that have lax or even non-existent oversight. According to the Network for Public Education, more than 1,100 charter schools are now run by for-profit entities. That is more than 14 percent of charter schools. Prior to the Education Department's updates to the Charter Schools Program (CSP), a 2016 audit found that charter school programs run by for-profit entities in California, Florida, Michigan, New York, Pennsylvania, and Texas all lacked internal guardrails that posed risks to student learning and enabled waste, fraud, and abuse of federal funds.

I also have serious concerns about the effects of charter school programs on students' civil rights. Although charter schools by law are required to honor students' and families' civil rights protections—such as Individual Education Plans for students with disabilities—gray areas surrounding a school's legal status may leave them ill-equipped to provide every student with a legally required fair and equitable education.

Studies show that charter schools are more segregated than traditional public schools. In addition, students may be rejected, unnecessarily disciplined, or expelled for reasons that would not be allowed at a traditional public school, often with few or no avenues for recourse. Then there is the issue of the number of charter schools that close—often abruptly. In fact, about 25% of charter schools close within 5 years—leaving students and families without support and sometimes without information.

Often for-profit management entities are based outside the bounds of federal oversight—not really the “choice” parents are looking for.

Yes, parents should be able to decide the best way to educate their children; however, this should not come at the expense of a strong, quality public education system that protects and supports every child. That is why I ask that committee members join me in supporting more magnet schools—schools that provide choice within the public school system and that come with accountability and nondiscrimination. My home school district in Beaverton Oregon, for example, offers some very popular options—an art magnet, a science and engineering magnet, and an international magnet.

Instead of proposing an 80 percent cut to the Title I program, my colleagues to invest in public education and evidence-based choice programs so every family can send their child to a high-quality, accountable, and safe public school.

Thank you to our witnesses for being here, and I yield back the balance of my time.

Chairman BEAN. Thank you very much, Ranking Member. Pursuant to Committee Rule 8–C, or Sub–C, all Committee members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically. You have to use Microsoft Word format to do it by 5 p.m. after 14 days from today's hearing, which is March 20, 2024.

Without objection, the hearing record will remain open for 14 days after the date of this hearing to allow such statements, and other extraneous material referenced during the hearing to be submitted for the official hearing record. I note for the record the Subcommittee that some of our colleagues who are not permanent members of this Committee may be waving on for the purpose of today's hearing.

Now, I know you are wondering how does our Committee staff find foremost experts in the field, but once again, they have done so. They have traveled across the Nation, and we have got some premier experts on charter schools. Once again, it is my pleasure to introduce today's all-star panel.

Our first witness is Dr. Macke Raymond, who is the Founder and Director of the Center for Research for Education Outcomes at Stanford University, located in Stanford, California. Dr. Raymond

has served as Director of the Center since its inception and has steered the group to national prominence as a rigorous and independent source for policy and program analysis.

She leads the Center in investigating the effectiveness of public charter schools and has spearheaded several landmark studies on charters.

Our next witness will be introduced by our Ranking Member, Ms. Bonamici. Ranking Member?

Ms. BONAMICI. Thank you, Mr. Chairman. Dr. Julian Vasquez Heilig is a Founding Board Member of the Network for Public Education and an academic whose research focuses on K12 education practices that impact equity and innovation. He previously served on the Executive Committee, and as Education Chair for both Kentucky and California NAACP.

Dr. Vasquez Heilig received his Ph.D. in Educational Administration and Policy Analysis, and a Master's Degree in Sociology from Stanford University—kind of west coast heavy here so far. He has also earned a Master's Degree in Higher Education and a Bachelor's Degree in History and Psychology from the University of Michigan. Go Wolverines. Welcome Dr. Vasquez Heilig.

Chairman BEAN. All right. Let us go to the east coast where our third witness is standing by waiting to be introduced. Mr. Robert Pondiscio who is a Senior Fellow at the American Enterprise Institute located in Greenville, New York. Mr. Pondiscio is a Senior Fellow at the AEI where he focuses on K through 12 education curriculum, teaching school choice and charter schooling.

Before joining AEI, Mr. Pondiscio was a Policy Analyst for Education Reform at the Thomas B. Fordham Institute, and education policy think tank. He worked previously for the Corps, this is good, previously for the Core Knowledge Foundation as an advisor and civics teacher at Democracy Prep Public Schools, and then became interested in education policy issues where he started teaching fifth grade at a struggling South Bronx Public School in 2002.

We will hear from him in just a moment, but our final witness is Mr. Kenneth Campbell, who is the CEO of New Schools for Baton Rouge, which is in Baton Rouge, Louisiana. Previously, Mr. Campbell served as Executive Director for IDEA Public Schools of Southern Louisiana.

President of the Black Alliance Educational Option and as Founding Director of Charter Schools for the Louisiana Department of Education where in the years following Hurricane Katrina, he was responsible for rebuilding New Orleans education infrastructure to high-quality charter schools.

Mr. Campbell served 8 years of active military duty, and 13 and 1/2 years of Reserves before retiring as a Captain in 2005. Thank you for your service, Mr. Campbell.

We thank all our witnesses. We are eager to hear you. There is this one little rule that you need to know about, and it's the 5-minute rule. Everybody has 5 minutes, we do too, and so pursuant to Committee Rules, I ask each of you to limit your oral presentation. If you go over or get near, you will hear this sound, that means to wrap it up.

We appreciate you, but you can submit your written testimony as long as you want, I have received—I think we have all received

the written testimony. We also remind everybody that we have a duty to be responsible in the information that you provide to the Subcommittee. With that, let us get to it. Dr. Raymond, you are first of all, welcome. We are glad to have you here, and you are recognized. The floor is yours. Dr. Raymond, your mic. Mine is clicking off too, but.

STATEMENT OF DR. MACKE RAYMOND, FOUNDER AND DIRECTOR, CENTER FOR RESEARCH ON EDUCATION OUTCOMES, STANFORD UNIVERSITY, STANFORD, CALIFORNIA

Ms. RAYMOND. All right, starting over at zero. Chairman Bean, Ranking Member Bonamici, and other members of the Committee, good morning, and thank you for the opportunity to speak with you today. I am joined by Dr. Won Fy Lee, a lead analyst with the study that I will discuss today.

For over two decades, CREDO has studied national charter schools, and have produced three national studies of the academic progress in charter schools, compared to carefully selected comparison students in nearby district schools, in partnership with 29 states and the District of Columbia.

By the time I saw the results of our third analysis in early 2023, we had waited 10 years to solve a mystery. To tell you more, I need to frame the results in the context of the two prior studies. In 2009, our studies showed charter students learning less than their District peers in both reading and math, by a statistically significant amount.

Using a comparison standard of 180 days of learning in a typical District year of 180 days of schooling, charter students only had a 174 days of learning in math, and 163 days of learning in—I am sorry, 174 in reading, and 163 in math.

In 2013, the second study showed improvements across the sector, posting a positive advantage of six extra days in learning and reading, and breaking even with District students in math.

As everyone knows, two points make a line, but they do not make a trend. The latest results from 2023 were keenly anticipated. Our findings showed charter school students had 16 more days of learning in reading, and 6 additional days of learning in math than similar peers in local District schools, and both comparisons were statistically significant.

I will return to this trend later. Good results for charter school students were even more pronounced for urban students, for black and Hispanic students, for low-income students, and students served by charter school networks. For each of these groups attending charter schools led to more learning in a year's time compared to peers in adjacent District schools.

Not all the results in the national charter school study were positive. The learning for rural charter school students is not strong, and special education students in charter schools also lagged the learning of their peers in District schools.

While comparative progress of black and Hispanic charter school students is positive compared to their District counterparts, both sets of students learned substantially less than their white peers on average.

Targeted improvement would benefit all of the groups I have just mentioned. The study revealed insights about charter school networks, also called Charter Management Organizations or CMOs. The average student in a charter school network gained more than a month of extra learning compared to their District school counterparts in both reading and math.

More importantly, charter school networks do not sacrifice learning as they replicate in scale. The final set of results I want to mention are the so-called gap busting schools.

We look for charter schools that had above average achievement in their respective states, and of these, we subset schools that had learning for minority or poverty students that was at least as strong as the learning of their white or non-poverty charter school classmates.

We found hundreds of schools who met the criteria. In fact, over 1,000 schools where Hispanic students exceeded the progress of their white classmates. Moreover, we found dozens of charter networks able to produce these impressive results across their entire networks.

The implications from the national charter school study are important and timely. Millions of charter school students have been well served, adding to their education progress, and their life outcomes. The charter school community also delivered many examples of successful schools and showed that scaling successful models is now common.

These examples hold promise for adding more charter schools, and for fulfilling their charge to be laboratories of new, and now proven ideas. The long-term trend of these three studies shows especially what legislators like of this Committee, are able to do, to devise policy levers to create good outcomes.

The Charter School Law pairs flexibility and accountability, and these forces produce incentives for continuous improvement that are readily apparent in the data we study. We see thousands of schools getting a little bit better each year, which explains the upward trend line.

The insight we think is welcome, considering the general State of schools coming out of the pandemic. I will conclude with the idea that there are untapped opportunities for exporting successful models to other schools, and for other laws to use similar incentives to provide further improvements in our public school system. Thank you very much.

[The Statement of Ms. Raymond follows:]

Testimony of Margaret E. Raymond, PhD
House Committee on Education and the Workforce, Subcommittee on Early Childhood, Elementary, and Secondary Education
Hearing "Proven Results: Highlighting the Benefits of Charter Schools for Students and Families"

Margaret E. Raymond, Ph.D.
Testimony before the US Congress House of Representatives
Education and the Workforce Committee

Wednesday, March 6, 2024

Introduction

Chairman Bean, Ranking Member Bonamici, and other members of the Committee, Good morning and thank you for the opportunity to speak with you today.

I am Margaret Raymond, Director of the Center for Research on Education Outcomes (CREDO), at the Hoover Institution of Stanford University. I am joined today by Dr. Won Fy Lee, a lead analyst of the study I will discuss today.

Over two decades, CREDO completed [three national studies](#) of academic progress in charter schools compared to carefully selected comparison students in nearby district schools, in partnership with 29 states and the District of Columbia. [Figure 1 shows the results from each study.]

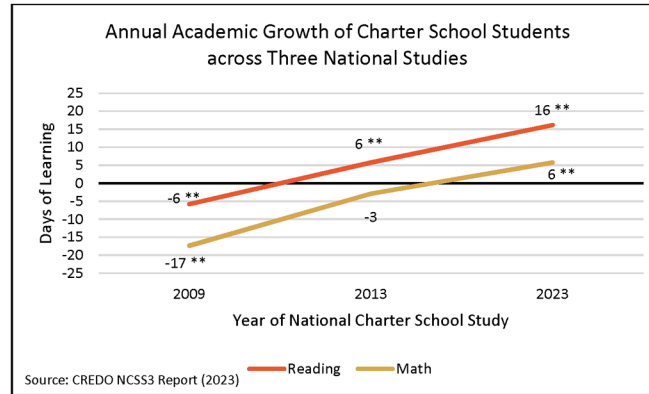
Charter School Student Performance

By the time I saw the results of our third analysis in 2023, we had waited 10 years to solve a mystery. But to tell you more, I need to frame the results in the context of the prior two studies. Our 2009 study showed charter students learning less than their district peers in both reading and math by a statistically significant amount. Using a comparison standard of 180 days of learning in the typical 180-day district school year, charter students had 174 days' learning in reading and 163 days in math. In 2013, the second study showed improvement across the sector, posting a positive advantage of 6 extra days of learning in Reading compared to their peers in district schools and breaking even with them in Math.

Wednesday, March 6, 2024

Testimony of Margaret E. Raymond, PhD
 House Committee on Education and the Workforce, Subcommittee on Early Childhood, Elementary, and Secondary Education
 Hearing "Proven Results: Highlighting the Benefits of Charter Schools for Students and Families"

Figure 1



As everyone knows, two points make a line but they do not make a trend, so the latest results were keenly anticipated. Findings showed charter school students had 16 more days of learning in a school year in Reading and six additional days of learning in Math than similar peers in local district schools. Both comparisons were statistically significant. I will return to the trend across the three studies later.

Good results for charter school students were even more pronounced for urban students, Black and Hispanic students, low-income students, and students served by charter school networks. For each of these groups, attending charter schools led to more learning in a year's time compared to peers in adjacent district schools.

Not all results of the National Charter School Study III are positive. The learning of rural charter school students is not strong. Special Education students in charter schools also lag the learning of their peers in district schools.

While the comparative progress of Black and Hispanic charter school students is positive compared to their district counterparts, all these students learn substantially less than white students. Targeted improvement would benefit these students.

Testimony of Margaret E. Raymond, PhD
 House Committee on Education and the Workforce, Subcommittee on Early Childhood, Elementary, and Secondary Education
 Hearing "Proven Results: Highlighting the Benefits of Charter Schools for Students and Families"

Charter School Networks

The study revealed insights about charter school networks, often called charter management organizations or CMO's. The average student in a charter school network gained more than a month of extra learning compared to their district school counterparts. Moreover, charter school networks do not sacrifice learning as they replicate and scale.

Gap-Busting Schools

The final set of results I want to mention are the so-called Gap-Busting Schools. We looked for charter schools that had above- average achievement in their respective states. Of these, we tagged schools with learning for minority or poverty students that was at least as strong as their white or non-poverty charter school classmates. We found hundreds of schools who met the criteria we set – in fact, over 1000 where Hispanic students exceeded the progress of their White classmates. Moreover, we found dozens of charter networks able to produce these impressive results across their entire network.

Implications

The implications from the National Charter School Study III are important and timely. Millions of charter students have been well served, adding to their education progress and life outcomes. The charter school community also delivered many examples of successful schools and showed that scaling successful models is common. These examples hold promise for adding more charter schools and for fulfilling their charge to be laboratories of new – and now proven – ideas.

The long-term trend of the three studies shows what legislators like this committee can do: devise policy levers to create good outcomes. Charter school laws pair flexibility – the protected option for schools to try new things – and accountability – at least a credible threat of sanction or closure if they underperform. These forces produce incentives for Continuous Improvements that are readily apparent in the data we studied. We see thousands of schools getting a little better each year, which explains the upward trend line. The insight is welcome considering the general state of schools coming out of the pandemic.

I will conclude with the idea that there are untapped opportunities to export successful models to other schools and for other laws to use similar incentives to prompt further improvements in our public school system.

Chairman BEAN. Thank you very much, Dr. Raymond. Well done. Next, let us go to Dr. Heilig. Dr. Heiling, thank you for coming today and welcome, and the floor is yours.

STATEMENT OF DR. JULIAN VASQUEZ HEILIG, FOUNDING BOARD MEMBER, NETWORK FOR PUBLIC EDUCATION, AUGUSTA, MICHIGAN

Mr. VASQUEZ HEILIG. Thank you, Chair and members of the Committee. I am honored to contribute to this critical discussion on school choice, sharing insights from my multi-faceted engagement with the charter school sector. As a former charter school educator, donor, parent, board member and now researcher.

These experiences combine with my academic inquiry have provided me with a deep understanding of the nuances and complexities surrounding charter schools. In the late 1990's, my research of charter schools began in Michigan, as a State at the forefront of the charter school movement.

This journey continued through an instructional role as the Aspire charter school in East Palo Alto, California, and as a Board member of a charter school in Austin, Texas. Witnessing my daughter's education within a charter school further personalized my insights into the sector's impact on students and families.

As a researcher and tenured scholar, I have published 28 peer reviewed articles, reports and law reviews and other publications on school choice. The foundational premise of charter schools was to foster innovation and provide an alternative that would spur improvements within the traditional public school system. The body of peer reviewed academic research, including my own studies, increasingly questions the efficacy of charter schools in delivering on these promises.

Data from the NCES indicates no significant academic advantage for charter school students over their public school counterparts. Furthermore, CREDO's series of ongoing reports have sometimes noted positive achievement results, and other times they have found negative results.

Often in the hundredths of a standard deviation. CREDO has also faced criticism for the methodology from the National Education Policy Center and the Network for Public Education, casting doubt on the significance and replicability of their days of learning framing of their findings.

Beyond the question of academic outcomes, charter schools have been shown to exacerbate pre-existing challenges within the public education system. As noted by the 2016 resolution from the NAACP that came forward when I served as NAACP Education Chair in California, charter schools on average exhibit higher rates of teacher turnover, decreased teacher quality, serve less special needs students and intensified racial segregation, and have exhibited inequitable disciplinary practices.

The work of such scholars as Kevin Welner, among others, have illuminated how charter schools' selective recruitment and retention practices contribute to a deepening of educational disparities. My own research corroborates these findings, highlighting the troubling extent of racial segregation in charter schools, and challenging the inclusivity and equity of the choice model.

Here is the flip side. The issue of accountability, or lack thereof in the charter sector is particularly alarming. The absence of rigorous oversight in many states has paved the way for financial mismanagement, conflicts of interest, and a disturbingly high rate of school closures. A recent study by NPE found that over 25 percent of charter schools closed within 5 years.

By year ten, the closure rate was 40 percent. Millions of public funds from the Department of Education have been spent on charter schools, they either never opened after receiving those grants or closed within a year. These dynamics not only disrupt a students' educational paths but have resulted in documented misallocation of billions of dollars in public funds.

The governance structure of many charter schools, especially those managed by for-profit entities, often fail to align with the broader community interests where they are located, undermining the principal of public accountability and education.

Moreover, the unchecked expansion of the charter sector poses significant risks to the public education system because it dilutes resources and exacerbates the challenges of delivering a high-quality education in all sectors.

The problem is accentuated by the expected nationwide decline of K-12 student populations in public schools, underscoring the urgency of focusing our efforts on improving existing infrastructure, rather than expanding the charter sector indiscriminately.

Given these concerns, my stance on charter schools has evolved toward a more cautious and critical perspective. While most have heard the original idea that charter schools would serve as laboratories for educational innovation, and provide families with diverse options, it is imperative that we address the profound existing issues of accountability and financial management that currently beset the school choice movement.

In consideration of the predominant perspective of educational research data, it is imperative that we unite in advocating for strategic reassessment of the charter school model, with a focus on upholding educational excellence, reinforcing our value of education as a public good, and enhancing community's involvement in charter schools.

Only through a concerted effort to confront and resolve these challenges can we ensure that charter schools will instead contribute positively, rather than negatively, to our collective goal of an effective education system for all students. It is my sincere hope that this testimony serves as a catalyst for thoughtful and comprehensive reevaluation of the charter school landscape.

I do not mean to be the skunk at the garden party, but may it ignite initiatives and policies aligned with our highest educational aspirations, guaranteeing every child access to a high quality education that is emblematic of our Nation's dedication to excellence in education for all children and families. Thank you for considering these perspectives on this critical issue.

[The Statement of Mr. Vasquez Heilig follows:]

Testimony to the House Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary, and Secondary Education

Chair and Members of the Committee,

I am honored to contribute to this critical discussion on school choice, sharing insights from my multifaceted engagement with the charter school sector—as a former charter educator, donor, parent, board member, and now researcher. These experiences, combined with my academic inquiry, have provided me with a deep understanding of the nuances and complexities surrounding charter schools.

In the late 1990s, my research into charter schools began in Michigan, a state at the forefront of the charter movement. This journey continued through an instructional role at Aspire Charter School in East Palo Alto California, and as a board member of a charter school in Austin, Texas. Witnessing my daughter's education within a charter school further personalized my insights into the sector's impact on students and families. As a researcher and tenured scholar, I have published 28 peer reviewed articles, reports and law reviews and other publications about school choice.

The foundational premise of charter schools was to foster innovation and provide an alternative that would spur improvements within the traditional public school system. Yet, the body of peer reviewed academic research, including my own studies, increasingly questions the efficacy of charter schools in delivering on these promises. Data from the National Center for Education Statistics indicates no significant academic advantage for charter school students over their public school counterparts. Furthermore, the Center for Research on Educational Outcomes (CREDO) series of ongoing reports have sometimes noted positive achievement result and other times they've found negative results, often in the hundredths of a standard deviation. CREDO has also faced significant criticism for their methodology from the National Education Policy Center and the Network for Public Education, casting doubt on the significance and replicability of the "days of learning" framing of their findings.

Beyond the question of academic outcomes, charter schools have been shown to exacerbate pre-existing challenges within the public education system. As noted by the 2016 resolution from the NAACP that came forward when I served as California NAACP Education Chair, charter schools on average exhibit higher rates of teacher turnover, decreased teacher quality, serve less special needs students, and have intensified racial segregation and inequitable disciplinary practices. The work of scholars such as Kevin Welner, among others, has illuminated how charter schools' selective recruitment and retention practices contribute to a deepening of educational disparities. My own research corroborates these findings, highlighting the troubling extent of racial segregation in charter schools and challenging the inclusivity and equity of the choice model.

The issue of accountability, or the lack thereof, in the charter sector is particularly alarming. The absence of rigorous oversight in many states has paved the way for

financial mismanagement, conflicts of interest, and a disturbingly high rate of school closures. A recent study by the Network for Public Education found that over 25% of charter schools closed within five years. By year 10, the closure rate was 40%. Millions in public grant funds from the US Department of Education have been spent on charter schools that never opened or closed after a year. These dynamics not only disrupt students' educational paths but also have resulted in the documented misallocation of billions of dollars in public funds. The governance structures of many charter schools, especially those managed by for-profit entities, often fail to align with the broader community interests, undermining the principle of public accountability in education.

Moreover, the unchecked expansion of the charter sector poses significant risks to the public education system, diluting resources and exacerbating the challenges of delivering quality education across the board. This problem is accentuated by the expected nationwide decline in K-12 student populations in public schools, underscoring the urgency of focusing our efforts on improving existing educational infrastructures rather than expanding the charter sector indiscriminately.

Given these concerns, my stance on charter schools has evolved towards a more cautious and critical perspective. While most have heard the original ideal that charter schools would serve as laboratories for educational innovation and to provide families with diverse educational options, it is imperative that we address the profound existing issues of accountability and financial management that currently beset the charter school movement.

In consideration of the predominant perspective of educational research data, it is imperative that we unite in advocating for a strategic reassessment of the charter school model, with a focus on upholding educational excellence, reinforcing the value of education as a public good, and enhancing community involvement. Only through a concerted effort to confront and resolve these challenges can we ensure that charter schools will instead contribute positively rather than negatively to our collective goal of an effective education system for all students.

It is my sincere hope that this testimony serves as a catalyst for a thoughtful and comprehensive reevaluation of the charter school landscape. May it ignite initiatives and policies aligned with our highest educational aspirations, guaranteeing every child access to a quality education that is emblematic of our nation's dedication to excellence in education for all children and families.

Thank you for considering my perspective and research on this critical issue. I look forward to the possibility of collaborating to foster a more equitable and responsive education system for every student.

Sincerely,

Julian Vasquez Heilig
Professor and Founding Board Member Network for Public Education

School Choice Scholarship

FIRST AND SINGLE AUTHORED ARTICLES IN PROFESSIONAL JOURNALS (*REFEREED/PEER-REVIEWED)

Vasquez Heilig, J., Brewer, J. and Williams, Y. (2019). Choice without inclusion?: Comparing the intensity of racial segregation in charters and public schools at the local, state and national levels. *Journal of Education Sciences*, 9(3), 1-17.*

Vasquez Heilig, J. & Clark, B. (2018). New insights and directions: Considering the impact of charter school attributes on communities of color, *Journal of Transformative Leadership and Policy Studies*, 7(1), 3-9.*

Vasquez Heilig, J. (2013). Reframing the refrain: Choice as a Civil Rights issue. *Texas Education Review*. 1(1), 83-94.*

Vasquez Heilig, J., Williams, A., McNeil, L & Lee, C. (2011). Is choice a panacea? An analysis of black secondary student attrition from KIPP, other private charters and urban districts. *Berkeley Review of Education*, 2(2), 153-178.*

FIRST AND CO-AUTHORED ARTICLES IN LAW REVIEWS

Vasquez Heilig, J., Nelson, S., & Kronzer, M. (2018). Does the African American need separate charter schools? *Law & Inequality: A Journal of Theory and Practice*, 36(2), 247-267.

Vasquez Heilig, J. Holme, J., LeClair, A. V., Redd, L., & Ward, D. (2016). Separate and unequal?: The problematic segregation of special populations in charter schools relative to traditional public schools. *Stanford Law & Policy Review*, 27(2), 251-293.

CO-AUTHORED ARTICLES IN PROFESSIONAL JOURNALS (*REFEREED/PEERREVIEWED)

Portales, J., & Vasquez Heilig, J. (2015). Understanding universal vouchers and urban public schools in Santiago de Chile: Educational administrators' responses to choice. *Multidisciplinary Journal of Educational Research*, 5(2), 194-237.*

Portales, J. & Vasquez-Heilig, J. (2014). Understanding how universal vouchers have impacted urban school districts' enrollment in Chile. *Education Policy Analysis Archives*, 22(68). Retrieved from <http://epaa.asu.edu/ojs/article/view/1427/1314>*

BOOK CHAPTERS

Vasquez Heilig, J. (2021). Scrutinizing the school choice Equity Ethos for Black parents. In D. Berliner & C. Hermanns (Eds.), *Public Education: The Cornerstone of American Democracy*, (pp. XX-XX). New York, NY: Teachers College Press.

Vasquez Heilig, J., Brewer, T.J. & White, T. (2018). What Instead?: Reframing the debate about charter schools, Teach For America, and testing. In R. Ahlquist, P. Gorski and T. Montano (Eds.), *Assault on Kids and Teachers: Countering privatization, deficit ideologies and standardization of U.S. schools*, (pp. 201-217) New York: Peter Lang.

HANDBOOKS

Vasquez Heilig, J., Brewer, J. & Adamson, F. (2019). The politics of market-based school choice research: A comingling of ideology, methods and funding. In M. Berends, A. Primus and M. Springer (Eds.) *Handbook of Research on School Choice*, 2nd (pp. 335-350). New York, NY: Routledge.*

EDUCATION POLICY REPORTS, BRIEFS, AND FIELD PUBLICATIONS

Vasquez Heilig, J. (2018). *NEPC Review: "Bigger Bang, Fewer Bucks?"* (University of Arkansas Department of Education Reform, February 2018). Boulder, CO: National Education Policy Center.

Vasquez Heilig, J., LeClair, A.V., Lemke, M., & McMurrey, A. (2014). *Remarkable or poppycock?: Lessons from school voucher research and data*. Austin, TX: Texas Center for Education Policy, University of Texas at Austin.

Vasquez Heilig, J. & Portales. (2012). *Are vouchers a panacea?: Data from international implementation*. Austin, TX: The Institute for Urban Policy Research and Analysis, University of Texas at Austin.

School Choice Scholarship Descriptions

FIRST AND SINGLE AUTHORED ARTICLES IN PROFESSIONAL JOURNALS (*REFEREED/PEER-REVIEWED)

Choice without inclusion? (2019) by Vasquez Heilig, J., Brewer, J., and Williams, Y. explores the extent of racial segregation in charter versus public schools across various geographies. This study critically examines whether school choice leads to inclusive educational environments or exacerbates segregation.

New insights and directions (2018) by Vasquez Heilig, J., & Clark, B. analyzes the impact of charter school policies on communities of color, offering a nuanced look at how these schools affect diverse populations and suggesting pathways for creating more equitable educational opportunities.

Reframing the refrain: Choice as a Civil Rights issue (2013) by Vasquez Heilig, J. argues that school choice should be viewed through a civil rights lens, challenging the notion that choice inherently leads to better outcomes for marginalized communities and calling for a reevaluation of choice policies.

Is choice a panacea? (2011) by Vasquez Heilig, J., Williams, A., McNeil, L., & Lee, C. scrutinizes the effectiveness of charter schools and KIPP programs, particularly focusing on attrition rates among black students, questioning the efficacy of choice as an educational reform strategy.

CO-AUTHORED ARTICLES IN PROFESSIONAL JOURNALS (*REFEREED/PEERREVIEWED)

Understanding universal vouchers and urban public schools in Santiago de Chile (2015) by Portales, J., & Vasquez Heilig, J. investigates the response of educational administrators to school choice in the context of Santiago, Chile, providing insights into the global implications of voucher systems.

Understanding how universal vouchers have impacted urban school districts' enrollment in Chile (2014) by Portales, J. & Vasquez-Heilig, J. examines the effects of voucher systems on school enrollment patterns in Chile, offering a comprehensive look at the consequences of market-based educational reforms.

FIRST AND CO-AUTHORED ARTICLES IN LAW REVIEWS

Does the African American need separate charter schools? (2018) by Vasquez Heilig, J., Nelson, S., & Kronzer, M. critically examines the proposition of African American-specific charter schools as a solution to educational disparities, analyzing the legal, social, and educational implications.

Separate and unequal? (2016) by Vasquez Heilig, J., Holme, J., LeClair, A. V., Redd, L., & Ward, D. delves into the segregation issues within charter schools, comparing them to traditional public schools and highlighting the challenges special populations face in these environments.

BOOK CHAPTERS

Scrutinizing the school choice Equity Ethos for Black parents (2021) by Vasquez Heilig, J. critiques the equity claims of school choice advocates, focusing on the experiences and perspectives of Black parents navigating these systems.

What Instead?: Reframing the debate about charter schools, Teach For America, and testing (2018) by Vasquez Heilig, J., Brewer, T.J., & White, T. challenges mainstream narratives around educational reform, proposing alternative frameworks that prioritize equity and inclusion.

HANDBOOKS

The politics of market-based school choice research (2019) by Vasquez Heilig, J., Brewer, J., & Adamson, F. critically examines the intersection of ideology, methodology, and funding in school choice research, unpacking the complexities behind the push for market-based reforms.

EDUCATION POLICY REPORTS, BRIEFS, AND FIELD PUBLICATIONS

NEPC Review: "Bigger Bang, Fewer Bucks?" (2018) by Vasquez Heilig, J. offers a critical analysis of a report promoting the cost-effectiveness of charter schools, disputing the underlying assumptions and methodologies that charter schools are more cost effective than neighborhood public schools.

Remarkable or poppycock?: Lessons from school voucher research and data (2014) by Vasquez Heilig, J., LeClair, A.V., Lemke, M., & McMurrey, A. debunks common myths about the effectiveness of school vouchers, providing a data-driven critique of voucher policies.

Are vouchers a panacea?: Data from international implementation (2012) by Vasquez Heilig, J. & Portales. explores the global impact of voucher systems on educational equity, drawing lessons from various countries' experiences with school choice.

Chairman BEAN. Dr. Heilig, well done. Thank you very much. I was following along because you have submitted your written testimony earlier. Mr. Pondiscio, you are recognized. Welcome to the Committee, and you got 5 minutes, and your mic needs to.

**STATEMENT OF MR. ROBERT PONDISCIO, SENIOR FELLOW,
AMERICAN ENTERPRISE INSTITUTE, GREENVILLE, NEW YORK**

Mr. PONDISCIO. Thank you, Chairman Bean, Ranking Member Bonamici and members of the Committee. Thank you for having me. My name is Robert Pondiscio, I am a Senior Fellow at the American Enterprise Institute and a former teacher. In 2002, I became a fifth-grade teacher at the lowest performing public school in the south Bronx, New York City's lowest performing school district.

A mere 16 percent of PS277 students could read at grade level. The first charter schools were just opening up in the neighborhood. Back then there were virtually no alternatives to the schools that had failed children for decades. In my role at AEI, I study and write about education, including charter schools, but my focus has seldom strayed from the question that motivated me to become a teacher in the first place.

How can we ensure that disadvantaged children in places like the south Bronx have every opportunity to succeed in school and in life? A few years ago, that very question took me back to the south Bronx where I spent a year at Success Academy Charter School, literally across the street from where I had been a student teacher, and a few blocks from my old school.

This charter school was delivering astonishing results for children. In the years since I had left my classroom, Success Academy had grown from a single school in nearby Harlem, to 45 schools across New York City, educating 17,000 children. The lowest performing of those schools had 85 percent of its students pass the New York State English Language Arts test.

That was the worst one. The Success Academy school with the lowest pass rate in math had 92 percent of its students at or above proficiency, the others were even better. Said differently, if Success Academy were a school district it would be the highest scoring district in New York State. It gets better results than the city's gifted and talented programs, and better results than wealthy suburban districts with multimillion dollar homes.

More than 90 percent of Success Academy students are children of color, mostly low-income, black and Hispanic. By comparison, only 1 in 3 black and Hispanic children in New York City test at or above grade level in math or reading.

I spent a year embedded at Success Academy Bronx 1, not as a teacher, but this time as a reporter and researcher, writing a book about the lessons that Success might teach us that could be applied to K-12 education at large. After all, a founding ideal of the charter school movement was to serve as an engine of innovation and experimentation.

I welcome the opportunity to discuss in detail what I observed, but in a sentence, what I saw is what is possible when you allow parents to select a high-functioning school, and when every adult in a child's life teachers and parents alike, is pulling in the same direction, just as it has been demonstrated time and again in America's past.

For years I have applied what I call the Tiffany test to my work in education. It is named after a real-life student that I had when I taught fifth grade. You have heard of the expression "a problem

child”? Well, Tiffany was a not your problem child. She came to school every day in my fifth-grade classroom in a spotless school uniform.

Never missed a day of school, never missed a homework assignment. She was hard-working and conscientious. Tiffany was solidly at grade level in a school where that was rare. I called her a not your problem child because 1 day I pointed out to my Assistant Principal that I was not doing very much to challenge Tiffany, this incredibly diligent, dutiful, perfectly behaved, entrusting kid who was deeply devoted to her school and her education.

The Assistant Principal said something I’ll never forget. She said, “She’s not your problem.” What she meant was, why are you worried about Tiffany? You have got kids who are far below grade level in reading and math, you have got behavior problems, you have got special needs kids. Who cares about Tiffany? She will be fine.

Reading and doing math at grade level is the starting line for my child, and for yours, but it is the finish line for Tiffany, and kids like her in America. No one would tell the parent or teacher of a well-off student we have got bigger problems than your kid. She is doing well enough.

Even in the most dysfunctional schools and classrooms in America, you will find some number of diligent and hard-working kids whose parents believe in the promise of education, but whose teachers have bigger problems than the not your problem child. The Tiffany test is simply this. There are parents and kids who demonstrate faith in education and upward mobility and the American dream.

Are we doing all in our power to ensure that faith is rewarded? Ten years later, what did I see at Success Academy? Tiffany, in nearly every seat. Tiffany, or someone like her. It is commonly said in teaching that we should meet the children where they are. It is equally important, I believe, to have an education system that meets families where they are.

There is no rational or moral reason for government policy at any level to prevent the children of motivated, engaged, and invested Americans of any race, ethnic group, or income level, from reaping the full rewards of their talents and ambitions.

There is no reason to interfere with parents’ earnest efforts to do what is best for their children. I title my book *How the Other Half Learns*, and I chose that title frankly, because I do not think I am wrong, or over-simplifying to suggest that if you are wealthy, you have every conceivable option available to you.

If you are poor, black or brown, you get a lecture. You get hand wringing over fairness. You are told to be patient. You are told your most promising student is not your problem. Public charter schools pass the Tiffany test. Thank you very much.

[The Statement of Mr. Pondiscio follows:]



Statement before the House Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary, and Secondary Education
On “Proven Results: Highlighting the Benefits of Charter Schools for Students and Families”

Proven Results: Highlighting the Benefits of Charter Schools for Students and Families

Robert Pondiscio

Senior Fellow

Wednesday, March 6, 2024

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Chairman Bean, Ranking Member Bonamici, and members of the Committee, thank you for having me. My name is Robert Pondiscio. I'm a senior fellow at the American Enterprise Institute and a former teacher.

In 2002, I became a fifth-grade teacher at the lowest-performing public school in the South Bronx, New York City's lowest-performing school district. A mere 16 percent of PS 277 students could read at grade level. The first charter schools were just opening up in the neighborhood back then; there were virtually no alternatives to the schools that had failed children for decades.

In my role at the American Enterprise Institute, I study and write about education, including charter schools. But my focus has seldom strayed from the question that motivated me to become a teacher in the first place: How can we ensure that disadvantaged children in places like the South Bronx have every opportunity to succeed in school and in life?

A few years ago, this question took me back to the South Bronx, where I spent a year at a Success Academy charter school literally across the street from where I'd been a student teacher, and a few blocks from my old school. But this charter school was delivering astonishing results for children.

In the years since I'd left my classroom, Success Academy had grown from a single school in nearby Harlem to 45 schools across the city educating 17,000 children. The lowest-performing of those schools had 85 percent of its students pass the New York State English Language Arts test. That was the *worst* one. The Success Academy school with the lowest pass rate in math had 92 percent of its students at or above proficiency. The others were even better.

Said differently, if Success Academy were a school district, it would be the highest-scoring district in New York State. It gets better results than the city's gifted and talented programs. And better results than wealthy suburban districts with multi-million-dollar homes.

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And more than 90 percent of Success Academy students are children of color, mostly low-income, Black, and Hispanic. By comparison, only one in three black and Hispanic children in New York City test at or above grade level in math and reading.

I spent a year embedded at Success Academy Bronx 1—not as a teacher, but as a reporter and researcher, writing a book about the lessons Success might teach us that could be applied to K–12 education at large. After all, a founding ideal of charter schools was to serve as engines of innovation and experimentation.

I welcome the opportunity to discuss in detail what I observed, but in a sentence: What I saw is what is possible when you allow parents to select a high-functioning school and when every adult in a child’s life, teachers and parents alike, is pulling in the same direction—just as has been demonstrated time and time again in America’s past.

For years I have applied what I call the “Tiffany Test” to my work in education. It’s named after a real-life student I had when I taught fifth grade.

You’ve heard of the expression “the problem child.” Tiffany was a “not-your-problem child.”

She came to school every day in a spotless school uniform. Never missed a day of school. Never missed a homework assignment. She was hard-working and conscientious. Tiffany was solidly at grade level in reading and math in a school where that was rare.

I call her a “not-your-problem child” because one day I pointed out to my assistant principal that I wasn’t doing very much to challenge Tiffany—this incredibly diligent, dutiful, perfectly behaved, and trusting kid who was deeply devoted to school and her education. This assistant principal said something I’ll never forget. She said, “She’s not your problem.”

What she meant was: “Why are you worried about Tiffany? You’ve got kids who are far below grade level in reading and math. You’ve got behavior problems and special needs kids. Who cares about Tiffany? She’ll be fine.”

Reading and doing math at grade level is the starting line for my kid and yours. But it’s the finish line for Tiffany and kids like her? In America?

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No one would tell the parent or teacher of a well-off student, “We’ve got bigger problems than your kid. She’s doing well enough.”

Even in the most dysfunctional schools and classrooms in America, you will find some number of diligent and hard-working kids whose parents believe in the promise of education, but whose teachers have bigger problems than the “not-your-problem child.”

So the Tiffany Test is simply this: There are parents and kids who demonstrate faith in education, upward mobility, and the American Dream. Are we doing all in our power to ensure that faith is rewarded?

So 10 years later, what did I see at Success Academy? Tiffany.

In nearly every seat. *Tiffany*.

It’s commonly said in teaching that we should “meet the children where they are.” It’s equally important, I think, to have an education system that meets families where *they* are.

There is no rational or moral reason for government policy at any level to prevent the children of motivated, engaged, and invested Americans of any race, ethnic group, or income level from reaping the full rewards of their talents and ambitions.

There is no reason to interfere with parents’ earnest efforts to do what they deem best for their children.

I titled my book *How the Other Half Learns*. And I chose that title because, frankly, I don’t think I’m wrong or oversimplifying it to suggest if you are wealthy, you have every conceivable education option available to you. You can opt out of the public system or purchase a home in a wealthy community. You have access to excellence. It’s unquestioned and uncontroversial. If you are poor, Black, or brown, you get a lecture. You get hand-wringing over fairness. You’re told to be patient. You’re told your most promising student is “not your problem.”

Public charter schools pass the Tiffany Test.

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Chairman BEAN. Mr. Pondiscio, thank you very much, and right on time. Our final witness, who has given service to our country, thank you again, Mr. Kenneth Campbell from Louisiana. Welcome to the Committee, and you are recognized.

STATEMENT OF MR. KENNETH CAMPBELL, CHIEF EXECUTIVE OFFICER, NEW SCHOOLS FOR BATON ROUGE, BATON ROUGE, LOUISIANA

Mr. CAMPBELL. Thank you. Good morning. Chairman Bean, Ranking Member Bonamici, and members of the Committee, thank you for this opportunity to speak with you. My name is Kenneth Campbell, and I am the CEO of New Schools for Baton Rouge, a nonprofit founded in 2012 by civic and community leaders to transform public education in our city.

Our core belief is that every child deserves a great school, and our mission is to ensure that every child has access to an excellent education. I have spent the past 30 years advocating for, and working with educators, parents and community leaders across the country to develop and implement thoughtful and impactful charter school policies and initiatives.

In 2007, I was tapped by the Louisiana Department of Education to serve as the Founding Director of the State Charter School Office, and to help lead efforts to rebuild New Orleans education system following Hurricane Katrina. We did it by empowering local educators to restart their schools as charter schools, so that they would have the autonomy to make the best decisions for students.

Before Katrina, New Orleans was the second lowest performing school district in Louisiana, with the graduation rate of less than 60 percent. Recent studies now say that New Orleans, an all charter district, has one of the highest academic growth rates of any urban school district in the country.

As CEO for New Schools for Baton Rouge, my energy and efforts are focused on utilizing charter schools to drive the same type of improvement and innovation in Baton Rouge. Our work with charters is centered around two questions. First, are charter schools serving students and families well?

Second, are they accelerating learning for our most vulnerable children? We believe the answer to both of those is a resounding yes. As with most school districts nationwide, Baton Rouge schools have struggled to recover from COVID.

However, in the state's most recent performance evaluation almost 70 percent of our charter schools surpass their 2019 school performance scores, compared to less than 40 percent of the District's traditional schools.

Almost 80 percent of charter schools in our city improve their performance year over year. Not surprisingly, this academic success and innovation are driving greater demand. We are celebrating 30 years of chartering in Louisiana this year. We have 87,000 kids in charter schools in Louisiana, and in Baton Rouge, almost 30 percent of students who attend a public school, attend a charter school.

That tells us that moms, dads, grandparents, continue to seek out new and better schools for their kids, and we should be in the business of trying to help them do that. Charter schools serve as

catalysts for educational innovation. Bell Chase Academy, just south of New Orleans was the Nation's first charter school on a military base was founded to meet the unique needs of military children.

We have two charter schools in our city that partner with large healthcare centers and hospitals to collaborate on academic resources and opportunities in STEM education. GEO Next Generation High School is committed to ensuring that every student graduates from high school, having also earned an associate's degree.

Unfortunately, as has been mentioned here a couple times a day, not every charter school is successful. In fact, accountability is a cornerstone of the charter school model. Unlike traditional public schools, when charter schools are not performing up to standards, they can be closed.

While the decision to close any school is regrettable, we must be committed to evaluating performance, and when necessary, making the difficult decision to redirect resources to schools that better serve students, and our communities' needs.

Earlier I spoke about the growth of charter schools in Louisiana and across the country. While local leaders deserve all of the credit for the hard work of planning and launching schools, I would be remiss if I did not acknowledge the key role that the charter school program has played in the growth and expansion of charter schools over the past 25 years.

We are deeply appreciative that Congress continues to allocate resources to the charter school program, and we hope that charter schools continue to enjoy strong, bipartisan support.

I also want to acknowledge Congresswoman Letlow, and Senator Cassidy, both from the great State of Louisiana, for partnering with colleagues, and their respective chambers, to introduce legislation to help charter schools solve two of the biggest hurdles, access to facilities and resources to help educators and community leaders strengthen their charter applications.

Charter schools provide viable options for families and students who want more from their public schools. They empower families with the ability to choose the school that best fits their child's needs. They engage communities with a sense of ownership and pride.

There is no question that our public education system is struggling, and I believe charter schools can be important collaborators with school districts to develop programs and services that improve all public schools for all students. Again, thank you for this opportunity to speak, and thank you for recognizing the vital role that charter schools play in the education of our students.

[The Statement of Mr. Campbell follows:]

Written Statement of Kenneth Campbell, CEO of New Schools for Baton Rouge, before the Subcommittee on Early Childhood, Elementary, and Secondary Education (Committee on Education and the Workforce)

Good morning.

Chairman Bean, Ranking Member Bonamici, and Members of the Committee, thank you for this opportunity to speak with you today. My name is Kenneth Campbell, and I am the CEO of New Schools for Baton Rouge, a non-profit initiative founded in 2012 by civic and community leaders to transform public education in Baton Rouge, Louisiana. Our core belief is that every child deserves a great school, and our mission is to ensure that every child in Baton Rouge has access to an excellent public education.

I have spent the last 30 years advocating for and working with civic leaders, educators, and communities, at home and abroad, to develop and implement sound and impactful charter school policies and initiatives. In the 1990s, I helped shape the charter school law here in Washington, D.C., and worked with community leaders in launching the first charter schools in the area.

In 2007, I was tapped by the Louisiana Department of Education to serve as the founding director of the state charter school office and lead the state's efforts in rebuilding New Orleans' entire education system following the devastation of Hurricane Katrina. We did it by empowering local educators with the necessary infrastructure and systems to operate their schools with the autonomy to make the best decisions for their teachers, students, and communities and giving local parents the power to choose the school that best fits their child's needs. Before this transformation, New Orleans was the second-lowest performing school district in Louisiana, with a graduation rate of 54%. Recent studies now rank New Orleans, which is a 100% charter district, as the seventh best-performing school district in the top 200 large urban school districts in the United States, with a graduation rate of 80%.

Today, as CEO of New Schools for Baton Rouge, my energy and efforts are focused on utilizing charter schools to drive that same type of improvement and innovation in Baton Rouge. Our work with charters is centered around two questions. First, are charter schools serving students and families well? And second, are they accelerating learning for our most vulnerable children? The answer to both is a resounding yes.

As with most school districts nationwide, Baton Rouge schools have struggled to regain pre-COVID performance levels. In the state's most recent performance evaluation, just 38% of the district's traditional schools surpassed their 2019 scores. While charter schools have not been immune to the same struggles, the data revealed that Baton Rouge charter schools outpaced the district-run schools, with 67% surpassing their pre-pandemic scores.

In addition, 78% of charter schools in Baton Rouge increased their overall state performance score, while only 58% of district-run schools were able to do the same.

Our success in Baton Rouge is indicative of what is happening in charter schools nationwide, as you just heard in Dr. Raymod's testimony. This success is also driving greater demand. Little did we know that one little charter school launched in Minnesota in 1992 would launch a movement that is now 8,000 charter schools strong, serving more than 3.7 million students. In Louisiana, where we are celebrating 30 years of chartering, 147 charter schools serve more than 87,000 students in urban, rural, and suburban communities. In Baton Rouge, almost 30% of all students who attend a public school in our city attend a charter school. The power of choice is real. Parents want to choose the school that best fits their child's needs and interests, and charter schools provide that opportunity.

Contrary to what skeptics claimed would happen, charter schools are educating all children. In Baton Rouge, more than 90% of charter school students are students of color, and roughly 85% are economically disadvantaged. Further, charter schools in our state have not shied away from serving high-need student populations. Schools like Opportunities Academy in New Orleans, which provides a rigorous, full-day program for college-aged students with intellectual and developmental disabilities or Louisiana Key Academy, which specializes in serving students with dyslexia and operates three schools in our state, or the Emerge School for Autism, which was the first tuition-free school in the state for students with autism spectrum disorder.

In addition to providing engaging and individualized academic opportunities for families and students, charter schools also serve as catalysts for educational innovation. Belle Chasse Academy, just south of New Orleans, was the nation's first charter school on a military base and was founded to meet the unique needs of the military child. Two Baton Rouge charter schools, Baton Rouge Ochsner Discovery Health Sciences Academy and BASIS Materra, have partnered with local and regional healthcare systems, Ochsner Health and Woman's Hospital, to collaborate on academic resources and opportunities in STEM education, connecting classroom to career. GEO Next Generation High School partnered with Baton Rouge Community College to develop a dual enrollment program that puts students on track to graduate from high school with an associate degree. In 2023, GEO graduated its first class, with 50% of the students earning at least one year of college credit and 10% earning a complete associate degree.

Charter schools are not always successful. In fact, accountability is a cornerstone of the charter school model. Unlike traditional schools, when charter schools are not performing up to standards or expectations, their charter can be withdrawn, and the school is closed. While the decision to close any school is regrettable, it is integral to the success of charter schools. The ongoing commitment to evaluating and, when necessary,

redirecting resources to schools that better serve students' needs, showcases a dedication to fostering a robust and effective educational landscape.

Earlier in my remarks, I spoke about the growth of charter schools in Louisiana and across the country. And, while local leaders deserve the credit for the hard work of planning and launching schools, I would be remiss if I did not acknowledge the key role that resources provided through the federal Charter Schools Program have played in the growth and expansion of charter schools. The Charter Schools Program is the nation's only source of dedicated federal funding to support the creation, expansion, and replication of charter schools. For more than 25 years, the Charter School Program has provided resources to help ensure every child can access a high-quality public education, and those funds are essential to cover planning and start-up costs. Louisiana was recently awarded a \$55 million grant from this program, and our state superintendent is particularly excited about using those funds to create charter schools that serve our neediest children. We are deeply appreciative that Congress continues to allocate resources to the Charter School Program, and we hope that charter schools continue to enjoy strong bipartisan support as they work to accelerate learning gains across the country.

We are also grateful that Congresswomen Letlow and Tokuda have introduced a bipartisan bill, the *Empower Charter School Educators to Lead Act*, that would provide access to funding for educators and community leaders to help strengthen their charter school planning efforts and get the assistance they need to successfully complete the charter application. Also, Senators Cassidy and Bennet have introduced a bill, the *Equitable Access to School Facilities Act*, that would provide funding and financing for charter school facilities and make it easier for charter schools to get free access to public buildings. Both bills would help strengthen chartering. We also ask that you protect us from even more regulations from Washington that will make our work harder without benefiting students.

There is no question, our public education system is struggling. From decaying infrastructure and widening skill-level gaps to a lack of accountability and unmanageable bureaucratic school systems, too many of our public schools are failing our students, our families, and our communities. We must do something before it is too late.

Charter schools are not a magic cure. By themselves, they cannot be the end-all answer to what ails our public education system. But they are essential and crucial pieces in turning our public education system around and rapidly identifying and implementing alternatives that have the greatest impact on their students. They can provide viable options for families and students who want more from their public schools. They can empower families with the ability to choose the school that best fits their child's needs. They can engage communities with a sense of ownership, pride, and partnership. They can be important collaborators with school districts to develop programs and services that improve all public schools for all students.

Chairman BEAN. Mr. Campbell, thank you so much. Leave it to the military man to finish early and give us time back. Thank you so much. Under Committee Rule 9, we will now question witnesses under the 5-minute rule. I will begin the questioning. Put the clock on Bean as we embark. You all did a great job by the way. Thank you all for coming forward.

Mr. Pondiscio, you have got a unique perspective because you were a teacher in a public school, and now you have been involved in a charter school. Is it possible for you to tell us what is the difference? What is the secret? What is the secret sauce in charter schools and the difference?

Mr. PONDISCIO. I was a teacher at a public school and at a charter school. I taught high school civics for a time at Democracy Prep public charter schools in Harlem, New York. The difference is, and let me be clear, I do not think there is any particular magic that happens when you put the name Charter on a school building.

What it is, is a permission structure, right? Chartering allows you to innovate, allows you to do something new and different that you could not do in the public school system. Some charters take full advantage of that, some do not. Let us be honest. The best charters embrace this, and innovate around curriculum and instruction, which is my particular interest.

Some of the very best charters think thoughtfully about the job of the teacher, and making—how do you make that job, as I like to say, doable by mere mortals? As a former public school teacher, I can tell you that it is—I like to say it is the easiest job in the world to do badly, the hardest job in the world to do well.

One of the things that I have studied over the years, particularly in charters, particularly like the one that I reference in my testimony is innovative ideas around making the job doable by the teachers we have, not the teachers we wish we had.

Chairman BEAN. Were you coached differently? Is the administration at one or the other?

Mr. PONDISCIO. Oh, no question. Well, back to my experience as a charter school teacher, I got more observations in coaching on a single day than frankly, I got in 5 years at PS277 where I had two observations in 5 years. I do not mean two a year, two observations period, in 5 years.

In my first day teaching high school civics at Democracy Prep, my principal was in my classroom giving me feedback. If I may—

Chairman BEAN. I believe we will, I have got to move on, but hopefully we will explore that because I know you have had that insight right there. Dr. Raymond, we have heard we all want what is best for kids. We all want a system that thrives. We want an accountable system. We want to be measuring everybody's report card. All of our report cards should be the same because we can measure.

There has been some criticism on charters today that we do not measure them appropriately and what not. How do you respond to that criticism? Is that fair?

Ms. RAYMOND. I think that all schools should face the same outcomes performance criteria, and I think if we do that you will find, as Mr. Pondiscio said, some charter schools do not do very well, but the vast majority of them do. Those sets of criteria should apply regardless, and they ought to be tied to our learning standards that we think kids need to know in order to be successful in life.

Chairman BEAN. Is the CREDO measuring stick, and that is the measuring stick of how we based on educational outcomes. Is that fair? Does that need to be reformed? Is it accurate?

Ms. RAYMOND. Well, if we thought it was unfair we would change it. No. The idea that we have is that we have precisely matched on all things that we can measure, a student in a charter school, with students who look exactly like them, including their starting score, so, their educational endowments, in local District schools.

It is a peer reviewed methodology. We have had four published critiques, evaluations, of our methodology, and not only do we hold up well as a regular matching methodology, but our results actually approximate what you would get with so-called experimental designs. I am confident it is useful.

Chairman BEAN. Thank you very much.

Mr. CAMPBELL.

Mr. CAMPBELL. Yes, sir?

Chairman BEAN. You have got a distinguished career as a military veteran, but also as a business leader. You could do a lot of things, probably go elsewhere and make a lot of money, but you have made a decision to engage in bolstering charter schools and educational choice. Why are you doing that?

Mr. CAMPBELL. Very simple. I mean just the hundreds and hundreds of families, parents that I have talked to. I have been in living rooms where I have heard them talk about the challenges of getting a great education. I have heard them share their hopes, their wishes, their dreams, their aspirations for their kids that they felt like were being unmet.

Anything that I can do to help them do that, I think that is the most important work, and work that I will always look back upon fondly. If I could help parents be able to do that, that is what I am going to do.

Chairman BEAN. Was my opening statement accurate when I said there is a lottery, there are lines to get in, families literally live on that computer trying to get in. They know that sometimes it is the only way they can get out. They can elevate their family. Is that accurate?

Mr. CAMPBELL. It is in some cases. That is absolutely accurate in some cases. Others, you know, the reality is that you know, if we do this well, our schools will be better, and also traditional public schools will be better.

My hope again, is that we have great charter schools. They push our district in ways that they might not always want to be pushed, but that they get better also.

That we have a variety of offerings that parents, especially those parents who have a limited means can be able to access those schools.

Chairman BEAN. Thank you. Thank you, Mr. Campbell. I now yield the floor to Ranking Member Bonamici for 5 minutes, you are recognized.

Ms. BONAMICI. Thank you very much, Mr. Chairman. Thank you to the witnesses. I would like to start by reiterating that research on charter schools is mixed at best when it comes to determining their effectiveness at providing high quality academic instruction for students.

Additionally, research has shown that charter schools are less likely than traditional public schools to enroll and support students with disabilities, more likely to be segregated by race, socioeconomic status, class, and student language proficiency. I think, Dr. Raymond, you made a great case for a longer school year.

Mr. Pondiscio, you certainly made a case for more professional development, a differentiation, a great case for smaller class sizes, and more engaged administration, but I see our role as policymakers to care about all students, not just with those students with the parents who say okay, well we want to find a right fit for our students because you still have to look at everybody and give everybody a great education.

When I was in the Oregon legislature, I was on a charter review Commission, where we looked at it was 10 years after our charter law passed, and we were grappling with issues back then, maybe 12—15 years ago. A lot of questions still have not been answered today. How are charter schools determining which students enroll? Who serves on boards? To whom are they accountable?

What happens when charter schools close? Where do their students go? We had a lot of questions about the proliferation of online charter schools, which tend to have an abysmal record. Dr. Vasquez Heilig, you mentioned the lack of accountability and rigorous oversight of charter schools in many states, and also the high percentage of schools that closed.

What do students and families do when their charter school closes its doors? What recourse is there? What options do they have? If a charter school closes in the middle of an academic year, how does that affect the local public schools?

Mr. VASQUEZ HEILIG. Yes. I have to work in an example about the University of Michigan. I can want to go to the University of Michigan, but the University of Michigan also wants to have me too.

I think that is one of the issues that we have with charter schools is we talk about lotteries and these types of things, but the charter schools get to decide who is eligible for that lottery in a lot of cases, right.

If those students leave, then they are able to backfill those students, and they can decide how they want to backfill students when students leave, et cetera. When charter schools close, we know that public schools are going to welcome them back. Because public schools are a part of education as a public good, and so they are going to bring any student that comes to their door, they are going to allow them in.

We have to understand the school choice does not mean that parents can willy nilly choose a student they want in the school that they want to go to, they also have to be chosen by that school. It

is the same premise for vouchers too. Whether it is charters or vouchers, school choice means that the schools have a role in that choice.

If a charter school is closed, and we know that quite a few charter schools do close. I gave those numbers in my opening statement, that disrupts their education. That disrupts their families, and so those students are welcomed back with open arms to their public schools.

They do also have a lot of other opportunities for choice. Many districts have in-district charters. Those are community engaged charters. There are Magnet schools, there are community schools, there is a lot of community driven choice.

Ms. BONAMICI. Thank you. I want to get another question in. Like many other states, Oregon's witnessed of proliferation of online charter schools as I mentioned. In 2015, a CREDO report about online charter schools found such poor performance that Education Week actually quoted Dr. Raymond as saying it was literally as though the student did not go to school for the entire year.

Despite this enrollment, we know that they have long been some of the worst performing schools in the charter sector. There was a rise, of course, during the COVID 19 pandemic. In a 2022, a GAO report found that virtual charter schools had significantly lower proficiency rates on State tests compared with other school types.

What are the long-term outcomes for students who attend these schools, and what if anything, can we do to hold online charter schools accountable for poor performance?

Mr. VASQUEZ HEILIG. Right. I think that the CREDO has been very consistent in finding that the online charters perform especially poorly, especially in math, that they have been performing very poorly. When I was in California as Education Chair, this was something that California was tackling.

This is one of the biggest challenges in the charter sector. I think it is in the best interest of the charter sector to support accountability, because then their numbers would look better than hundredths of standard deviation of improvement. I think it is in their best interest for the good apples to call out the bad apples.

Ms. BONAMICI. I appreciate that—

Ms. RAYMOND. Can I clarify for the record?

Ms. BONAMICI. Go ahead, Dr. Raymond.

Ms. RAYMOND. The numbers that you have quoted are accurate, but of just a few weeks ago our team in part led by Dr. Lee, behind me, published a policy brief about online charter schools. I would be happy to enter that into the record during the follow-on period.

What we found is that in most online charter schools, while the average performance is bad, and that is certainly the case, there are in every school a substantial proportion of students who do well. The problem that I see now in this additional insight is that online schools are not for every student. They do not have the necessarily clearing and matching.

Ms. BONAMICI. I have to reclaim my time. They are also significant equity issues for students who do not have a parent or someone at home with them. Mr. Chairman, as I yield back, I want to enter into the record a letter by the National Network for Public

Education about charter schools and enter into the record as well, a report by the National Council on Disability entitled "Choice and Vouchers—Implications for Students with Disabilities."

Chairman BEAN. Without objection, so ordered. Thank you very much Ranking Member.

[The information of Ms. Bonamici follows:]

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March 3, 2024

Dear Chairman Bean and Ranking Member Bonamici:

I recently became aware of a hearing that you are holding regarding charter schools on March 6. On behalf of the Network for Public Education, I would like to share our thoughts and concerns regarding the present charter school sector.

The evolution of charter schools

In the 1970s, a New England teacher, Ray Budde, first proposed the idea of a charter school. He envisioned schools founded by parents and teachers that would contract with their local school board to discover new approaches to teaching hard-to-reach students. They would then share what they learned with the school district. Charters were to be part of the school district, under the school board's authority, rooted in the community, accessible to all, and of assistance to the broad public-schooling mission. A few charter schools today remain faithful to much of that vision; most do not.

The first charter school opened in Minnesota in 1992. In 1995, the same year the federal Charter School Programs began, J.C. Huizenga, whose extended family made their fortune in the waste management business, founded the for-profit National Heritage Academies to open, control, and house charter schools in buildings he owned or leased. The following year, the for-profit Leona Group began in Michigan and expanded into Arizona, where most of its schools are located today. One year later, and shortly after Florida's charter school law was passed, Jon Hage, a former researcher with the Heritage Foundation, started the third-largest for-profit chain, Charter Schools, USA. All three corporations then and today run their schools on a profit-making basis, which includes all real estate transactions connected with the schools. The largest for-profit charter management company, Academica, also began opening schools in 1997, starting a for-profit management company to control them two years later¹.

The first for-profit online charter school emerged in 2000 when former banker Ron Packard founded K12 Inc. K12's rival, online Connections Academy, began a year later in 2001. For-profit charter management corporations, some controlling hundreds of schools and others controlling only one or two, by 2022, educated twenty percent of all charter school students.ⁱⁱ An even greater number of students are enrolled in large state or national nonprofit charter chains whose CEOs make salaries approaching one million dollars, far beyond the pay for the superintendents of the nation's largest public school districts.

Ray Budde's original idea of the innovative school, opened by a democratically elected school board, which alone has the power to determine the school's mission and continuation, now exists in only two states—Virginia and Kansas. Today, most charter schools are taxpayer-funded businesses. Congress acknowledged this by allowing charters to receive Paycheck Protection Plan (PPP) funding during the pandemic.

As chartering became a business, a powerful lobby emerged to advocate for more independence and funding and less accountability and transparency. Lax laws have regularly resulted in charter churn (schools quickly opening and then closing), fraud, and abuse of taxpayer funds. And lobbying has resulted in the expansion of the Federal Charter School Programs (CSP), now funded at nearly a half-billion dollars a year. According to the U.S. Department of Education, CSP has given millions of dollars to schools that never opened or that closed even before their grant ended—14.5% of all granteesⁱⁱⁱ. These numbers do not include charter schools that closed after the grant dispersal period of three to five years.

What we know about charter schools and charter school laws

Forty-six states and the District of Columbia have charter school laws, although Kentucky's charter law was recently found to violate that state's constitution. States' various charter laws range from allowing charter schools to only be district schools (e.g., Virginia) to allowing charter schools to themselves be for-profit entities (Arizona). Thirty-five states allow for-profit corporations to manage nonprofit charter schools, including via "sweeps" contracts that allow tax dollars and control to be funneled to the for-profit that runs the day-to-day operation of the school. In six states (Arizona, Florida, Michigan, Nevada, Ohio, and West Virginia), for-profits manage over 30 percent of the charter schools in the state.^{iv} For-profits are allowed to run virtual, low-performing online schools in 32 states. The resulting profit-taking – as well as the exorbitant CEO salaries at non-profit management companies – reflects the stark shift away from a community mission.

Concerns regarding charter schools, however, go well beyond their management.

Charter churn: Unlike district public schools, charter schools are entrepreneurial—a private, non-elected board starts the school, governs and runs the school, and decides (or is forced) to close the school. The opening and shutting of charter schools regularly results in disruption in the lives of families and instability in communities and districts.

In 2021, Dr. Ryan Pflieger, an independent researcher, examined charter closure rates for the Network for Public Education. He used then-available data from the Common Core of Data for 1999 to 2017 to determine closure rates based on the year the school opened. During those years, 25% of charter schools closed within five years. By year 10, the closure rate was 40%. Dr. Pflieger estimated that charter closures had displaced one million children by 2019.^v

Similarly, the National Center for Research on Education on Access to Educational Choice (REACH) found the annual charter closure rate alone to be 5.4%, with an additional rate of "restructuring" at 1.6%.^{vi} These numbers did not include charter schools that had to return to district schools due to poor performance, scandal, or mismanagement.

In 2022-23, according to the recently released National Center for Education Statistics (NCES) database, 240 new schools opened—30 of which had 25 or fewer students.^{vii} That same year, 135 charter schools closed, became public schools, or were "inactive" and had no students. According to Bloomberg News, the number of financially distressed charter schools is "at a record high."^{viii}

The number of school-age children in the U.S. has been dropping, and according to NCES projections, that number will continue to decline through 2030.^{ix} In the past, school boards could look at these numbers and plan ahead with hiring and with school openings and closings. This planning is crucial; when enrollment drops, fixed costs, often referred to as stranded costs, remain the same while per-pupil costs to provide equivalent services increase. That means that local taxpayers are on the hook to

maintain the same level of service in their public schools even as they are funding an additional system. Economies of scale are lost.

For obvious reasons, charter school chum greatly complicates this decision-making and the burden on taxpayers. Yet, only five states have meaningful cap controls on the number of charter schools that can open. This results in charter schools competing for students not only with district public schools but even with other charter schools (as well as private schools), resulting in school closures and further loss of economies of scale.

Charter school mismanagement and fraud: Corruption and mismanagement in the sector is an ongoing concern. Each state has its own charter laws regarding transparency and accountability. The majority have insufficient protections. According to the National Alliance of Public Charter Schools database, thirty-three states allow owners or employees of the management corporation (for-profit EMO or non-profit CMO) that operates the school to serve on the school's nonprofit and supposedly independent board. Forty-two states allow potential conflicts of interest between the charter school and its service providers. In nineteen states, those related-party transactions are not even required to be disclosed.^x

After a ten-year investigation, the owners of Epic Youth Services (EYS) and the financial officer for both Epic Charter and EYS were arrested in June of 2022 for cheating Oklahoma taxpayers out of tens of millions of dollars. The trio had regularly enrolled "ghost students," including students in home and private schools, created fake invoices, used school credit cards for personal items, and dipped deep into the school's "learning funds" account to make political contributions to stall and obstruct an audit.^{xi}

In 2022, Torchlight Academy in North Carolina was closed due to comparable impropriety. A for-profit charter corporation of the same name was owned by a local businessman who managed the school and owned the building, thus setting the contract lease terms. His wife was the principal. Their daughter, the director of special education, altered student records. Her husband was on the payroll for \$20,000 a month to clean the small schools' classrooms.^{xii}

A Texas charter school named East Austin College Prep made national news in 2019 when the *New York Times* reported complaints of raccoons and rats invading classrooms, rain pouring in through a leaky roof, and furniture occasionally falling through rickety floors. Yet, according to the story, the charter high school paid almost \$900,000 in annual rent to its landlord, Southwest Key Program.^{xiii}

These are three examples of the hundreds of documented cases that result from a lack of regulation and insufficient oversight of the sector. It is often years before fraudulent and irresponsible practices are exposed if they are exposed at all.

The NPE website includes more than 1,000 press articles on fraud, mismanagement, profiteering, closures, and discrimination in the charter sector since 2017.^{xiv}

District-run public schools are subject to sunshine laws, regulations, bidding laws, public audits, and detailed public records to prevent – or at least significantly reduce – such instances of fraud and abuse. We ask, "Why is a lack of transparency necessary for charter school innovation?"^v

Academic achievement of students in charter schools: Notwithstanding the loudly trumpeted claims of charter-school advocates about the relative success of charter schools in improving the measured outcomes of students, the majority of studies show that students in charter schools do about the same as

students in public schools, thus providing no meaningful academic advantage. Moreover, because of access barriers that shape who enrolls in – and stays in – charter schools, studies cannot adequately control for differences between the two groups of students.

The National Center for Education Statistics (NCES) report entitled *School Choice in America*, issued when Betsy DeVos was Secretary of Education, compared charter school students' scores on the NAEP with public school scores while controlling for parents' educational attainment. According to that study, “no measurable differences in average 8th-grade reading and mathematics scores on the National Assessment of Educational Progress (NAEP) were observed between students in traditional public and public charter schools.”^{xv}

A recent CREDO report, which has received considerable attention, showed some minor advantages for charter schools overall. We note here that, while often referred to as “Stanford’s CREDO,” that is a misnomer. CREDO is housed in the pro-school choice, conservative Hoover Institution located on the campus of Stanford University. It is *not* a research department of Stanford University. Moreover, CREDO reports have been critiqued by scholars, not only on methodology but also for its contrived measure known as Days of Learning, which exaggerates outcomes. In fact, when the gold standard of research, effect sizes, is used, the lack of any notable differences in achievement becomes apparent – even from this recent study.^{xvi}

One of the difficulties in comparing the two sectors is controlling for selection effects—students are not generally assigned to charter schools by their residence, commonly referred to as catchment area. Instead, the students enrolled in almost all charter schools are, by definition, those who have parents who are actively engaged in choosing a school for their child — a strong sign that these children are also likely benefiting from parental engagement overall. Yet researchers have no way to control for this in panel data (regression) studies like CREDO’s (and studies using over-enrolled charter schools that use lotteries have limited generalizability).

However, a recent report sheds light on comparative student outcomes when charter schools don’t shape their own enrollment – when students are assigned without applying to a charter school. The city of Philadelphia engaged in school reform called the Renaissance Initiative beginning in 2010. The district took some of its struggling public schools and made them charter schools. They kept the same catchment areas so that there would be no lotteries, enrollment privileges, or even the obligation to apply—students would be assigned to a neighborhood school, but it would be a charter school not managed by the district. Fourteen years later, the students in those charter schools, on the whole, have lower achievement than those in the Philadelphia public schools. Nearly one-fourth of those charter takeovers have closed or were doing so poorly that the district had to resume control.^{xvii}

How charter schools shape enrollment: In 2021, researchers Wagma Mommandi and Kevin Welner of the University of Colorado Boulder co-authored *School’s Choice: How Charter Schools Control Access and Shape Enrollment*. The authors identified a wide variety of charter school practices and decisions that shape their enrollment, and they placed these practices into 13 different categories. Three of these categories are pre-enrollment, such as decisions about where to locate and how (and to whom) to market the school. Five categories contain practices during the enrollment process, such as letting prospective families of students with disabilities know that they have limited or no services for those students and steering them away from the school. And five more categories cover practices used by charter schools after students are enrolled, such as repeated suspensions and counseling students out (e.g., telling parents that their children will be retained in grade if they remain at the charter).^{xviii}

Beyond those practices described above, there are state-sanctioned enrollment privileges. Our review of laws, based on information contained in the National Alliance for Public Charter Schools database and the Education Commission of the States, revealed that although charters claim they are open to everyone via a lottery, 39 states give enrollment preferences to students beyond siblings and disadvantaged students. Four states allow charter schools to shape enrollment using academic and talent screening. North Carolina now offers enrollment privileges to tuition-paying foreign exchange students and the students of selected private preschools. Florida law gives exclusive enrollment privileges to the employees of businesses that service a retirement community, The Villages, whose developer started a charter school. If the parent quits, the child is dismissed from the school. Employment is checked monthly.^{xx}

The ability of charters to shape enrollment was one of the reasons that Judge Phillip J. Shepherd of Kentucky's Franklin County Circuit Court struck down the state's charter school funding law. Judge Shepherd explained why charter schools were not public schools according to the constitution of the Commonwealth of Kentucky.^{xx} In rendering his decision, he noted that charter school enrollment caps would result in the "rejection of children who through no fault of their own lack the resources, parental involvement, language skills, or other means to succeed in school or the charter school admissions process."

Systemic enrollment bias should also be at the forefront of any discussion of the very small differences that show up in some studies (e.g., the recent CREDO study) that compare charter schools to nearby district-run schools. As Mommandi and Welner explain in their book, those differences can easily be attributed to variables that are not (and realistically cannot be) included as controls in the researchers' models.

Summary

In that recent decision, Judge Shepherd called charter schools a "separate and unequal system of education." He based his decision on the following features: exemption from traditional oversight and regulation; enrollment caps, thus shutting out some children; for-profit management of the schools, therefore providing no "guardrails that ensure these tax dollars are used for a public purpose;" and governance by a board not elected by the public.

We agree with Judge Shepherd. Charter schools have wildly veered from their original purpose—to develop models to meet the needs of students unsuccessful in traditional schools under the supervision of democratically elected school boards. They have become an industry with a powerful, well-funded lobby that seeks to loosen rules and regulations while advocating for additional taxpayer funding and sector expansion.

While much of the blame for waste, fraud, and abuse in the sector results from insufficient state laws and regulations, Congressional action can make a difference. The Network for Public Education recommends the following.

- Move funding from the Federal Charter School Programs to Title I and the Community Schools Program. Both of these latter programs are underfunded and benefit all schools—public and charter alike. The CSP has expanded well beyond its original modest mission and has become a cash cow for real estate developers and even charter advocacy and lobbying organizations, including the National Alliance of Public Charter Schools.

- Prohibit federal funding from going to charter schools run by for-profit corporations. The running of schools by for-profits is a clever workaround of a 2006 Ninth Circuit ruling that allowed the U.S. Department of Education to withhold federal funding from charters owned by for-profits (based on the Elementary and Secondary Education Act of 1965).^{xxi}

We thank you for your attention and commitment to our nation's children. In addition to our extensive footnotes, we are happy to provide additional resources upon request.

Respectfully submitted on behalf of the Network for Public Education,

Carol Burris

Carol Corbett Burris, Ed. D.

Executive Director

The Network for Public Education is a national advocacy group whose mission is to preserve, promote, improve, and strengthen public schools for current and future generations of students.

ⁱ The development of the for-profit sector is documented in the Network for Public Education. (2021). *Chartered for Profit: The Hidden World of Charter Schools Operated for Financial Gain*. <https://networkforpubliceducation.org/chartered-for-profit/>

ⁱⁱ Network for Public Education. (February, 2023). *Chartered for Profit II: Pandemic Profiteering*. <https://networkforpubliceducation.org/chartered-for-profit-ii-pandemic-profiteering/>

ⁱⁱⁱ U.S. Department of Education. (2022). *Charter School Programs Final Rulemaking Fact Sheet*. https://oese.ed.gov/files/2022/07/CSP-Fact-Sheet_v3_07.06.22.pdf

^{iv} See National Alliance for Public Charter Schools. (2023). *Charter Law Database States*. <https://web.archive.org/web/20230201015532/https://www.publiccharters.org/our-work/charter-law-database/states/>; Education Commission of the States. (2020, January). *Charter School Policies*. <https://reports.ecs.org/comparisons/charter-school-policies-03> and Network for Public Education. (2023, February). *Chartered for Profit II: Pandemic Profiteering*. <https://networkforpubliceducation.org/chartered-for-profit-ii-pandemic-profiteering/>

^v Network for Public Education. (2020). *Broken Promises: An Analysis of Charter School Closures from 1999-2007*. <https://networkforpubliceducation.org/brokenpromises/>

^{vi} Douglas N. Harris, Valentina Martinez-Pabon. (2024). *Extreme Measures: A National Descriptive Analysis of Closure and Restructuring of Traditional Public, Charter, and Private Schools*. *Education Finance and Policy* 2024; 19 (1): 32–60. https://doi.org/10.1162/edfp_a_00386

^{vii} Data from this analysis can be found by using the National Center for Education Statistics Common Core of Data table generator which can be found at <https://nces.ed.gov/ipeds/data/ipedsdatacenter/ipedsdatacenter.asp>

^{viii} Melina Chalkia and Nic Querolo (February, 2024). Charter-School Stress Breaks Record With Pandemic Aid Ending. Bloomberg News. <https://finance.yahoo.com/news/charter-school-stress-breaks-record-181238315.html>

^{ix} National Center for Education Statistics. Digest of Education Statistics. https://nces.ed.gov/ipeds/data/digest/d21/tables/dt21_105.30.asp

^x See National Alliance for Public Charter Schools. (2023). Charter Law Database States. <https://web.archive.org/web/20230201015532/https://www.publiccharters.org/our-work/charter-law-database/states>

^{xi} Prather, Megan. (2021, May 27). "Epic Charter Schools cuts ties with Epic Youth Services, co-founders Ben Harris and David Chaney." Nondoc.com. <https://nondoc.com/2021/05/27/epic-char-ter-schools-cuts-ties-with-epic-youth-services-co-founders-ben-harris-and-david-chaney/>

^{xii} Walkenhorst, Emily. (2022, April 27). "NC education officials reject Torchlight Academy's appeal to stay open." WRAL News. <https://www.wral.com/nc-education-officials-reject-torchlight-academy-s-appeal-to-stay-open/20255272/>

¹² Kim Barker. (March, 2019). Southwest Key, Known for Migrant Shelters, Cashes In on Charter Schools. The New York Times. <https://www.nytimes.com/2019/03/15/us/southwest-key-schools.html>

^{xiv} For our complete listing, see <https://networkforpubliceducation.org/charter-scandals/>.

^{xv} See National Center for Education Statistics. (2019). School Choice in the United States: 2019. Indicator 6: Reading and Mathematics Performance. https://nces.ed.gov/ipeds/data/schoolchoice/ind_06.asp

^{xvi} Valerie Strauss. (October, 2023). Why What Looked Like Good News for Charter Schools Actually Isn't. Washington Post. <https://www.washingtonpost.com/education/2023/10/12/charter-schools-good-news-that-isnt/>

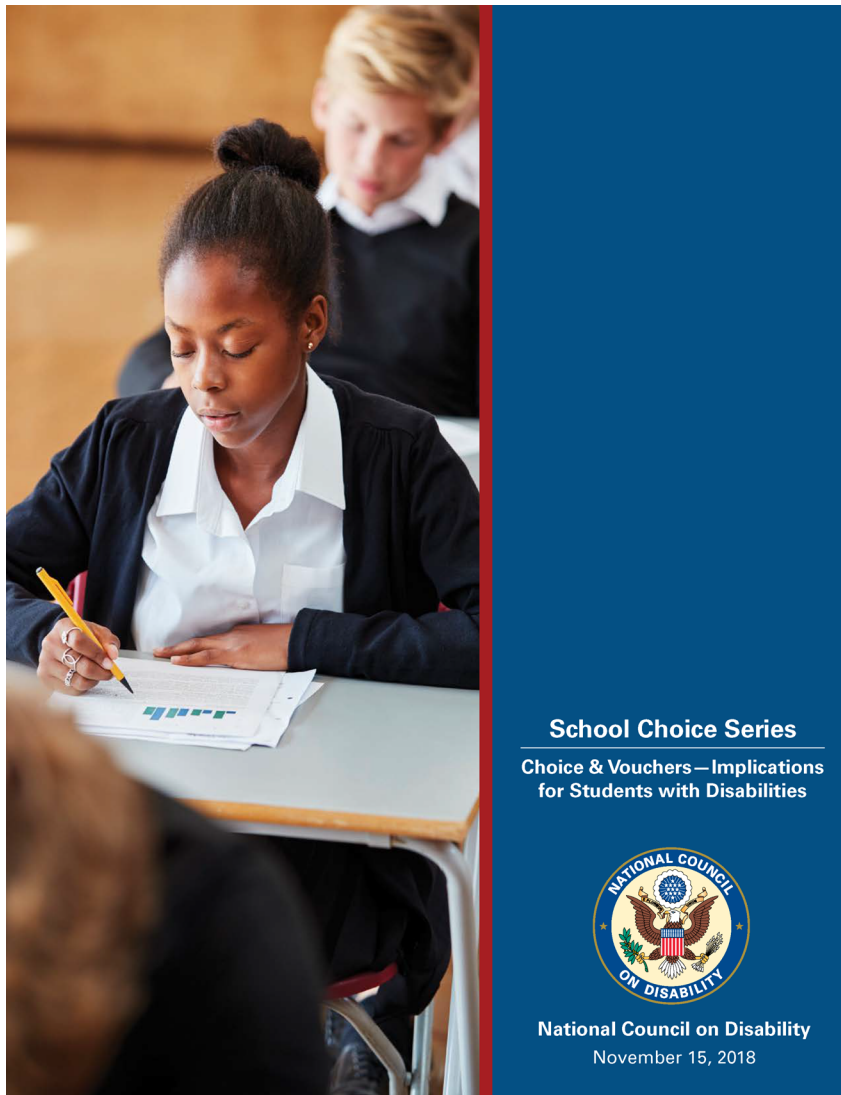
^{xvii} Dale Mezzacappa. (March, 2024) Philadelphia's 'Renaissance' Charter Schools Did Not Produce What Was Promised. Chalkbeat Philadelphia. <https://www.chalkbeat.org/philadelphia/2024/02/28/philadelphia-renaissance-charter-schools-didnt-better-student-performance/>

^{xviii} Mommandi, Wagma and Kevin Welner. (2021). School's Choice: How Charter Schools Control Access and Shape Enrollment. Teachers College Press.

^{xix} For documentation, see Network for Public Education. (March, 2024). Public Schooling in America: Measuring Each State's Commitment to Democratically Governed Schools. <https://networkforpubliceducation.org/public-schooling-in-america-2024/>

^{xx} Council for Better Education, Inc. v Jason Glass. <https://www.documentcloud.org/documents/24214199-hb-9-circuit-court-ruling?responsive=1&title=1>

^{xxi} Arizona State Board for Charter Schools, et. al. vs U.S. Department of Education. 464 F.3d 1003 (9th Cir. 2006). Retrieved from <https://caselaw.findlaw.com/us-9th-circuit/1467197.html>



National Council on Disability (NCD)
1331 F Street NW, Suite 850
Washington, DC 20004

School Choice Series: Choice & Vouchers—Implications for Students with Disabilities

National Council on Disability, November 15, 2018
Celebrating 30 years as an independent federal agency

This report is also available in alternative formats. Please visit the National Council on Disability (NCD) website (www.ncd.gov) or contact NCD to request an alternative format using the following information:

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The views contained in this report do not necessarily represent those of the Administration, as this and all NCD documents are not subject to the A-19 Executive Branch review process.



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

Letter of Transmittal

November 15, 2018

The President
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I submit this report for your consideration entitled *Choice & Vouchers—Implications for Students with Disabilities*. The National Council on Disability is an independent federal agency mandated with the responsibility of providing the President and Congress policy recommendations that promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into society for people with disabilities. This report is one of two independent analyses by NCD concerning school choice and its intersection with disability rights law. Considering the heightened interest of parents in school choice options and the current national dialogue regarding vouchers and school choice, we hope you find this report both pertinent and timely.

This report outlines the construct of vouchers, education savings accounts, and tax credits for students with disabilities. It also clarifies the effect on students with disabilities of programs of school choice that allow money for each eligible student to go directly to parents rather than to the public-school system. The paper explains how this adjustment in the flow of public funds results in critical and often misunderstood changes in protections for students with disabilities and their families, under not only the Individuals with Disabilities Education Act, but also federal nondiscrimination laws. Finally, this report makes multiple recommendations for federal and state departments of education and Congress to address problems that may deprive students with disabilities and their families of an equitable education.

NCD stands ready to work with federal agencies, state governments, the disability community, and other stakeholders to improve federal protection of the rights of students with disabilities in a manner consistent with parents' right to choose the method and venue of education that best fits their children's needs.

Sincerely,

Neil Romano
Chairman

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)

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Executive Summary

At the core of the nation's laws that govern public education is the right to equity. The promise of equity is also at the core of the nation's laws to protect students with disabilities. The Individuals with Disabilities Education Act (IDEA) seeks to guarantee equity by assuring that parents are meaningful partners in their child's education; that educational programs are specifically designed to meet each child's unique needs; and that children with disabilities make progress in the general education curriculum alongside peers without disabilities. As of the 2015–2016 school year, 6.7 million students with disabilities are eligible under IDEA and are receiving education from public school systems. More than 88,000 families have chosen to take their children out of public school and utilize available state-funded choice options, which effectively take them out from under the protections of IDEA and other federal statutes while also promising to customize quality educational options for their children's individual needs.

Given the heightened interest of parents in school choice options and the current national dialogue regarding vouchers and school choice, the terms *vouchers* and *tax-credit scholarships* have entered the mainstream dialogue and are fueling an ongoing debate about what is considered “public” education in the United

States and whether private options should be part of the public educational system. The debate includes increasing tension over school choice options for students with disabilities.

Proponents of school choice reforms believe that vouchers, education savings accounts, and tax scholarships will ultimately improve public education through the introduction of market forces that expand consumer choice and competition between schools. They also believe that public schools and the special education system are often failing students with disabilities, and vouchers provide a way for the federal and state governments to support parents choosing better options for their children outside of the public educational system. Opponents see vouchers, education savings accounts, and tax scholarships as empty promises that will deplete public school funds. They also see students with disabilities and their families potentially making uninformed choices or decisions that may leave students vulnerable to discrimination, rejection, substandard educational programs, or hidden expenses. Meanwhile, parents feel caught in the crossfire, with many thankful for choice opportunities and others angry at the need to make a choice that may shrink the resources of public schools. Many state programs systematically exclude low-income families that cannot afford the additional costs and fail

to include students of color with disabilities. Available private schools push out students with disabilities who are hardest to serve.

The National Council on Disability (NCD), recognizing this emerging debate on the use of educational vouchers, education savings accounts, and tax credits, commissioned research to better understand the experiences and outcomes for students with disabilities and their families that make use of voucher and voucher-like programs in lieu of traditional public schools. The policy paper, *Choice & Vouchers—Implications for Students with Disabilities*, which resulted from this research outlines the construct of vouchers, education savings accounts, and tax credits for students with disabilities. It also explains the effect of programs that allow money for each eligible student to go directly to parents rather than to the public school system, enabling parents to choose the school or services that they feel will best meet their child's needs.

The paper outlines how this alteration in the flow of public funds results in critical and often misunderstood changes in protections for students with disabilities and their families, under not only IDEA, but also federal nondiscrimination laws.

In order to gain a better understanding of the experiences of students with disabilities with respect to voucher programs, the study utilized a mixed-methods approach that included focus groups, interviews, and analysis of existing policies and secondary literature. The second component of the study was an examination of descriptive, quantitative data pertaining to students with disabilities and voucher programs available from the National Center for Educational Statistics (NCES), state departments of education, and various state websites. Two case studies were developed to demonstrate different perspectives on vouchers and choice options for students with disabilities.

Summary of Key Findings

According to the 2016–2017 *School Choice Yearbook*, there are 52 private school choice programs in 26 states and Washington, DC, serving more than 442,000 students. Of these programs there are 11 state voucher programs that are exclusively for students with disabilities: Arkansas, Florida, Georgia, Indiana, Louisiana, Ohio, Oklahoma, Utah, Mississippi, North Carolina, and Wisconsin. Five states currently have targeted education savings accounts (ESAs) for students with disabilities: Arizona, Florida, Mississippi, North Carolina (scheduled to start in 2018–2019), and Tennessee. Two states, South Carolina and Arizona, have tax credits (scholarship or individual) for students with disabilities.

Impact on Families and Students with Disabilities

The present report documents the following issues for families and students with disabilities:

- **Concerns presented in the 2003 NCD report *School Vouchers and Students with Disabilities* continue to be critical problems in 2018:** Parents and families using vouchers can lose access to rights; accountability can suffer; vouchers might only cover a portion of private school cost, leaving a majority of families unable to access any choice at all; and the state
- construct may profoundly affect rights and outcomes for students with disabilities.
- **Many students with disabilities and their families turn to choice options after experiencing intolerable conditions in public schools,** including the lack of services and the refusal or inability of public school districts to fulfill their obligations under IDEA; families decide to use choice options and enroll their children in private schools that may better meet their child's individualized needs.
- **Some families of students with disabilities seek other options despite being satisfied** with their child's individualized education program (IEP), especially private schools that have higher expectations for students and provide better services to children with a disability.
- **State departments of education and the U.S. Department of Education are not doing enough to ensure parents are making an informed decision** about giving up rights under IDEA and other federal statutes in exchange for public funds and vouchers, when a child with a disability is moved from public to private school.
- **Many families in this study are unconcerned about the loss of rights**

and are happy with their choices and the outcomes of their decision. Others are angry and frustrated about being forced to relinquish rights.

- **To benefit from a choice program, families need to be able to pay significant amounts from their own pockets for the cost of private school that vouchers do not cover,** including transportation and time to coordinate the educational program for their child.
- **Research on choice for students with disabilities is lacking.** Thus, in the absence of data on discrimination, discipline, segregation, length of time using vouchers, or other programs and outcomes, families, state officials, and advocates are unable to fully understand the consequence and impact of vouchers.

Impact on Rights under Federal and State Law

Regarding students with disabilities and their rights under federal and state law, the report found several concerning issues:

- **The Department of Education and the Office for Civil Rights have consistently stated that the use of vouchers constitutes a parental placement with no individual entitlement to free appropriate public education,** including special education and related services in connection with those placements.
- **For the majority of school voucher programs, if students attend a private school with the vouchers, they must relinquish their rights under IDEA,** including the right to assessments paid by the school district, an IEP, free appropriate

public education (FAPE), least restrictive environment (LRE), and procedural due process protections for them and their families.

- **Some parentally placed children with disabilities will not receive any special education services, and others will** because local education agencies (LEAs) are required to spend a proportionate amount of IDEA federal funds to provide equitable services to parentally placed children.
- **States continue to receive special education funding for voucher students and may require private schools using vouchers to carry out IDEA obligations.**
- **Voucher programs could include key components of special education services,** including procedural or substantive requirements, the right to an impartial due process hearing if the private school fails to comply, and IEPs.
- **States could require that private schools participating in voucher programs must be bound by the obligations of Title II of the Americans with Disabilities Act (ADA), judged according to the budget and resources of the state education agency (SEA) or local education agency (LEA), rather than to the particular private school's budget.**

As a result of these findings, this report makes multiple recommendations for federal and state departments of education and Congress to address problems that may deprive students with disabilities and their families of an equitable education. Voucher programs must address the civil rights of students with disabilities

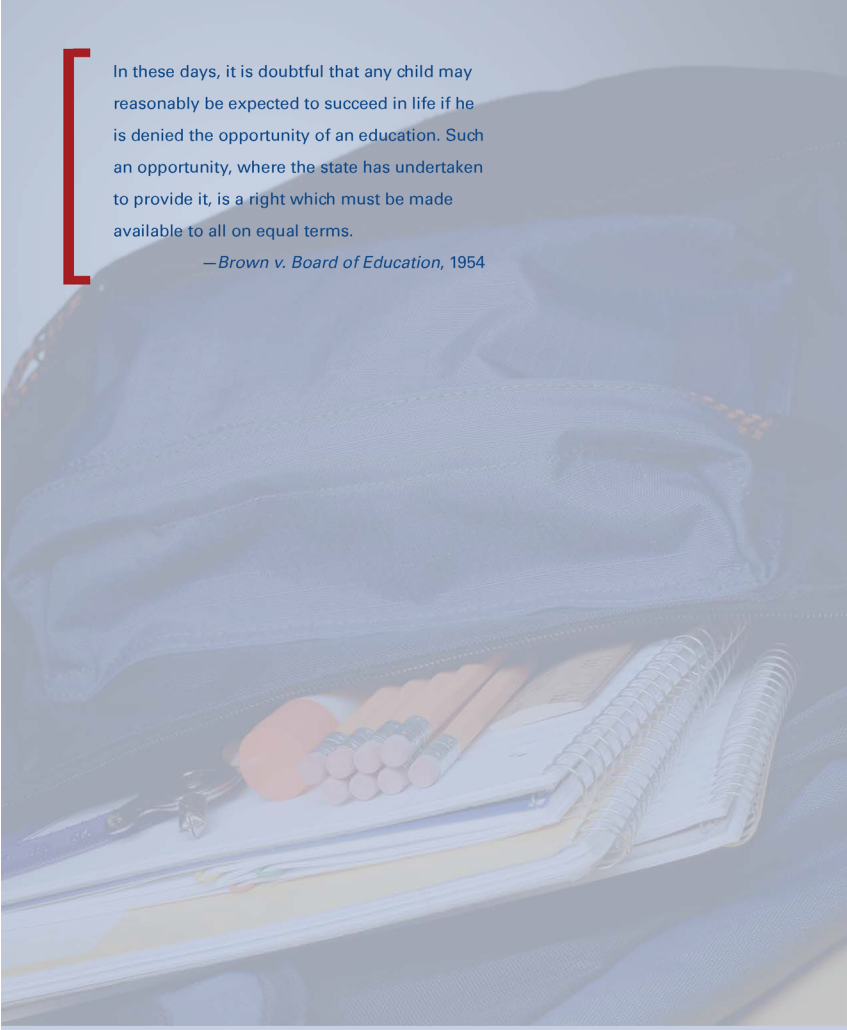
and address the extra costs often assumed by families when a child with a disability is attending private school. Parents must be fully informed about their options and rights when they are making a decision about their child's education, and additional research is needed to be sure that information is based on actual data and facts. Federal agencies can issue guidance on these issues, and Congress can enact legislation

to ensure that students with disabilities are protected from discrimination when using vouchers to attend private schools. State departments of education could be responsible for oversight of voucher programs and collection of data regarding students with disabilities. These changes would ensure that voucher systems are not only an educational choice, but also an equitable one.

List of Acronyms

ABA	applied behavior analysis
ACLU	American Civil Liberties Union
ADA	Americans with Disabilities Act
ADHD	attention-deficit/hyperactivity disorder
AFC	American Federation for Children
AFT	American Federation of Teachers
COPAA	Council of Parent Attorneys and Advocates
CRDC	Civil Rights Data Collection
DOE	Department of Education
DOJ	Department of Justice
DPI	Department of Public Instruction
ESA	Education Savings Account
ESEA	Elementary and Secondary Education Act
FAPE	free appropriate public education
FFA	federal financial assistance
GAO	(United States) Government Accountability Office
IDEA	Individuals with Disabilities Education Act
IEE	independent education evaluation
IEP	individualized education program
IES	Institute of Education Sciences
LEA	local education agency
LRE	least restrictive environment
LSP	Louisiana Scholarship Program
NAACP	National Association for the Advancement of Colored People
NCD	National Council on Disability
NCES	National Center for Educational Statistics
NCLB	No Child Left Behind Act of 2001
NCLD	National Center for Learning Disabilities
NCPE	National Coalition for Public Education
NDRN	National Disability Rights Network
NEA	National Education Association
NEPC	National Education Policy Center

OCR	United States Department of Education's Office for Civil Rights
PCESE	President's Commission on Excellence in Special Education
PECS	Picture Exchange Communication System
SEA	state education agency
Section 504	Section 504 of the Rehabilitation Act of 1973
SNAP	Supplemental Nutrition Assistance Program
SPED	special education
STO	school tuition organization
Title I	Title I of the Elementary and Secondary Education Act
Title VI	Title VI of the Civil Rights Act of 1964
USED	United States Department of Education



In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

—*Brown v. Board of Education*, 1954

Introduction

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹

—*Brown v. Board of Education*, 1954

At the core of the nation's laws that govern education is the right to equity. The promise of equity is also at the core of the nation's laws to protect students

with disabilities.

The Individuals with Disabilities Education

Act (IDEA) seeks to

guarantee equity by

ensuring that parents

are meaningful partners

in their child's education;

that educational

programs are specifically

designed to meet each

child's unique needs;

and that children with disabilities make progress

in the general education curriculum alongside

peers without disabilities.² As of the 2015–2016

school year, 6.7 million students with disabilities eligible under IDEA³ were receiving education from public school systems. More than 88,000

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More than 88,000 families of students with disabilities have chosen to take their children out of public school and utilize available state-funded choice options, which effectively take the student and parent(s) out from under the protections of IDEA and other federal statutes . . .

customize education to meet a child's needs and make quality educational options available to every child.⁵

Given the heightened interest of parents in school choice options and the current national dialogue regarding vouchers⁶ and school choice,⁷ the terms *vouchers*, *education savings accounts*, and *tax-credit scholarships* have entered the mainstream dialogue and are fueling an ongoing debate about what is considered “public” education in the United States.⁸

The National Council on Disability (NCD), an independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies, programs, practices, and procedures

that affect people with disabilities, recognized this emerging debate on the use of educational vouchers, savings accounts, and tax credits, and commissioned research to gain a better understanding of the

experiences and outcomes for students with disabilities and their families that make use of voucher and voucher-like programs in lieu of traditional public schools. The policy paper, *Choice & Vouchers—Implications for Students with Disabilities*, that resulted outlines the construct of vouchers, education savings accounts, and tax credits for students with disabilities. It also explains the effect of having such programs where a determined amount of money for each eligible student goes directly to parents rather than to the public school system, enabling parents to choose the school or services they feel will

best meet their child’s needs. This alteration in the flow of public funds results in important and often misunderstood changes in protections for students with disabilities and their families, not only under IDEA, but also under federal nondiscrimination laws.

Key to this research are the educational experiences and educational outcomes of voucher programs and educational savings accounts used by students with disabilities and their families for private schools. Many families of students with disabilities choose vouchers and

voucher-like programs as viable options for their child’s education and are satisfied with the outcomes realized. Other families of students with disabilities and public school supporters oppose voucher programs and other choice options.

Key to this research are the educational experiences and educational outcomes of voucher programs and educational savings accounts used by students with disabilities and their families for private schools.

These opponents assert that these programs do nothing more than redirect public money to privately operated enterprises, risking the possibility that private schools will make empty promises while depleting public education funds, thereby leaving many schools and students without quality or equitable educational opportunities. Critics caution loudly against the hidden costs, limited availability to all families, loss of rights for students with disabilities, loss of accountability, and lack of evidence. This report examines these issues and the effects on students with disabilities and their families.

Research Methods

To understand the experiences of students with disabilities with respect to voucher programs, NCD used a mixed-methods design that involves analysis of existing policies and secondary literature, quantitative data, and qualitative data for this report.

A. Review of Policies and Secondary Literature

Relevant statutes, regulations, and administrative guidance on the topic at the federal and state levels were reviewed. At the federal level, these materials include statutory and regulatory language of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) as well as guidance by the U.S. Department of Education with respect to students with disabilities and voucher programs. State-level analyses focused primarily on review of state voucher laws and evaluations of available information and data. We did a cursory review of trends in case law and administrative due process hearings that pertain to students with disabilities and voucher programs. Additionally, we conducted a literature review of relevant published material in academic journals, books, government documents, and the popular media.

B. Review of Existing Quantitative Data

For the quantitative component of this research, we examined existing data at both national and state levels pertaining to students with disabilities and voucher programs. Researchers looked at data available from the National Center for Educational Statistics (NCES), the U.S. Civil Rights Data Collection (CRDC), American Federation for Children (AFC) and the websites of individual state education agencies (SEAs); along with data that is cited in the secondary literature.

C. Qualitative Research

Researchers completed focus groups in Arizona, California, the District of Columbia, and Florida. One-on-one interviews were held with families from Florida, California, Michigan, and Ohio. Families and students represented many races and ethnic groups; some students who received free or reduced lunch were identified by a broad range of disability labels, including autism, physical disabilities, Down syndrome, intellectual disabilities, attention-deficit/hyperactivity disorder, communication difficulties, learning disabilities, mental illness, dyslexia, dysgraphia, and complex medical issues. Researchers also interviewed

attorneys, advocates, researchers, former education officials, and state officials. Select findings from participants are incorporated throughout this report. NCD appreciates all stakeholders who participated. Although the sample was limited and not intended to

be representative of the whole population of families utilizing voucher programs or stakeholders interested in these programs, participants provided useful insight into the experiences and perspectives of the families impacted by voucher programs.

Chapter 1: Current Landscape

A. Changes over Time and the NCD 2003 Report on Vouchers

In 2003, NCD issued a policy paper on vouchers that included a detailed history of how previous administrations tried to advance voucher programs, though no administration has done so as vigorously as the current one. At the time NCD released the report *School Vouchers and Students with Disabilities*,⁹ there was just one voucher program for students with disabilities in the United States: the Florida McKay Scholarship Program, which began in 2000. The last 15 years have seen a sharp increase in the number of states with voucher programs,¹⁰ with the current number being 27: 26 states and the District of Columbia.¹¹

While many families support, use, and are satisfied with choice options (see Section VI.C of this work), in 2003 NCD warned of the possible problems that remain of concern today: Parents and families could lose access to rights; accountability could suffer; and vouchers might only cover a portion of private school cost, leaving a majority of families unable to access any choice at all. NCD was concerned that these state constructs might profoundly affect rights and outcomes for students with disabilities.¹² The policy paper also made a pointed reminder that

The enactment of the Individuals with Disabilities Education Act (IDEA) codified the Constitution's guarantee of equal protection under law for all children and youth with disabilities, providing them with a free appropriate public education (FAPE) that meets their education and related services needs in the least restrictive environment (LRE). The implementation of IDEA has produced important improvements in the quality and effectiveness of the education received by more than six million children and youth with disabilities.¹³

In the last 15 years . . .

At the time NCD released the report *School Vouchers and Students with Disabilities* in 2003, there was just one voucher program for students with disabilities in the United States: the Florida McKay Scholarship Program, which began in 2000. The last 15 years have seen a sharp increase in the number of states with voucher programs, with the current number being 27: 26 states and the District of Columbia.

Under many of the state voucher programs, families must choose to give up rights under IDEA and other federal statutes in exchange for public funds.¹⁴ They often do so without understanding the loss of or change in rights and protections under the law when a child with a disability is moved from public to private school. In 2001, the U.S. Department of Education strongly encouraged states and school districts to notify parents of changes to their rights and protections under voucher programs in order to avoid any misunderstanding.¹⁵ However, the Government Accountability Office (GAO) released a report in 2017 showing that the information provided to parents on loss of rights and protections when accessing private school choice programs continues to be inconsistent and insufficient. The GAO found that an incredible 73 percent of private school choice programs provide no information at all.¹⁶ We found no discussion in the GAO report of whether states that do provide information to families, such as Georgia¹⁷ and Tennessee,¹⁸ provide the information translated into different languages. The Tennessee Department of Education does include a video in American Sign Language (ASL) on its

Individualized Education Account Program (IEA) resource page.¹⁹

Preceding the NCD policy paper, in June 2002 the President's Commission on Excellence in Special Education (PCESE) released a report that laid out 33 specific recommendations,

some having to do with vouchers and IDEA. The "Increase Parental Empowerment and School Choice" section supported school choice but recommended that

Under many of the state voucher programs, families must choose to give up rights under IDEA and other federal statutes in exchange for public funds.

IDEA should increase informed opportunities for parents to make choices about their children's education. Consistent with the No Child Left Behind Act, IDEA funds should be

[T]he Government Accountability Office (GAO) released a report in 2017 showing that the information provided to parents on loss of rights and protections when accessing private school choice programs continues to be inconsistent and insufficient. The GAO found that an incredible 73 percent of private school choice programs provide no information at all.

available for parents to choose services or schools, particularly for parents whose children are in schools that have not made adequate yearly progress under IDEA for three consecutive years.²⁰

In another section of the PCESE report, the Commission linked its voucher recommendations to

increase flexibility with regard to the least restrictive environment (LRE) requirements of IDEA.²¹

Federal policy should also provide the flexibility states need in this area [and]

should make clear that families working with IEP teams can choose charter schools and other choice options that target students with disabilities, even if these offer relatively restrictive environments, as long as those programs can appropriately serve the student.²²

Echoing the PCESE report, some advocates fear that the use of vouchers will return us to the days of segregation of students with disabilities by promoting disability-specific schools.²³ In fact, in the 2003 Report, NCD pointed out that in Florida, the special education vouchers were apparently providing the stimulus for new schools to serve only students with disabilities. The end result of large-scale voucher extensions to students with disabilities could lead to a new kind of segregation at public expense. Families and advocates in focus groups indicated that students often, but not always, used scholarships or vouchers to attend segregated schools. State departments of education do not currently track where parents use their vouchers, thus making it impossible for respective state governments to determine whether school choice programs are leading to segregation of students with disabilities. However, given the LRE mandate of IDEA, this kind of transparency should be required.

In 2003, NCD also stated that when publicly financed and operated systems work well, people are satisfied, such as is the case with many

forms of public transportation, for which there is no particular request for privatization. When systems fail, however, as in the case of many urban schools, public sentiment swings toward policies of reform and public control.²⁴ Indeed, many of the parents who participated in this current NCD research expressed frustration over the lack of services and the refusal or inability of districts to fulfill their obligations under IDEA; and the resulting desire to choose a school that would meet their child's individualized needs.

Interestingly, the 2003 NCD paper suggested that the primary rationale for providing vouchers to general education students was to escape

low-performing schools.

NCD hypothesized that students with disabilities would not flee public schools because students with disabilities did not participate in mandated standardized assessments at that time. With implementation of the No Child Left Behind

State departments of education do not currently track where parents use their vouchers, thus making it impossible for respective state governments to determine whether school choice programs are leading to segregation of students with disabilities.

Act in 2001 and the 2004 amendment of IDEA, schools were required to assess and report the progress for students with disabilities.²⁵ Efforts to include and count students with disabilities in assessments have increased accountability but may also have provided another reason for families to seek out choice options.

NCD also predicted that parents of students with disabilities would not seek choice options because of "critical mass," meaning that school districts, with 28 years of experience in providing educational services and supports to students with disabilities, had acquired and

maintained the infrastructure for specialized support that students with disabilities require.²⁶ Based on the responses of families that participated in this study, that sentiment has certainly shifted or has not proven to be true. Many believed that private schools had higher expectations and would provide better services to their child with a disability. Others sought relief from intolerable or unsatisfactory conditions in public schools.²⁷

In 2003, NCD also predicted that as options grew, many private schools would not want to serve students with disabilities or would not be able to provide the specialized services that students with disabilities needed. This is a legitimate fear because students with disabilities are a vulnerable population that has routinely and indisputably been the target of discrimination and diminished opportunities in education.²⁸ Anecdotal

data from interviews and focus groups conducted for this report suggests that much like the experiences in public and charter schools, how well a private school serves a student with disabilities depends on the leadership and culture of that school.

IDEA requires districts to pay for private school when they have failed to provide FAPE or a student's IEP team has agreed the student would be best served in a segregated setting (an example would be a Deaf student attending a private school where ASL is the main mode of instruction). Some question whether private school vouchers should be treated the same

way. NCD answered this question in 2003, and the answer still holds true today: There are stark differences between local school district private placements and other proposals for special education voucher programs. Under IDEA, with regard to placements in private schools that are ultimately funded by the local or state agency

1. The IEP team, rather than parents alone, holds the power of choice;
2. The public school district still has the primary responsibility to provide FAPE;
3. The IEP must choose the private school so that the public school can fulfill its

requirement to provide FAPE; and

4. All IDEA substantive and procedural rights and requirements must still be met.²⁹

Under IDEA, private schools are provided

as part of a continuum of services to meet LRE and FAPE. The IEP team is required to consider all possible options, including the use of supplementary aids and services, resource rooms, and homebound services (where a student receives educational and special education services through one-to-one teaching at home or in a hospital setting). The “choice” between public school and vouchers is not an either-or decision, but rather represents two possible options in an array of possible placements. We fully explore the issue of effect on IDEA rights in the current constructs in Chapter 5.

IDEA requires districts to pay for private school when they have failed to provide FAPE or a student's IEP team has agreed the student would be best served in a segregated setting.

B. Overview of Choice Programs

1. Types of Programs

School voucher programs (i.e., “school choice programs”) vary widely. Vouchers, tax credits, and ESAs are state-funded programs that provide eligible students a specific amount toward the cost of attending a private rather than a public school. The only exception is the Opportunity Scholarship Program in Washington, DC, which is funded by the federal government. Although we discuss each of the program types, the main focus of our discussion is on vouchers and ESAs as well as on the impact on students with disabilities and their families.

School Vouchers—Vouchers give parents the option to send children to a private school using public funding to pay all or part of the tuition. Under such a program, funds typically expended by a school district for public schools are allocated to a participating family in the form of a voucher to pay partial or full tuition for the private school, which may be religious or secular.

Education Savings Accounts—Education savings accounts (ESAs) allow parents to receive a deposit of public funds into government-authorized savings accounts with restricted but multiple uses. The nature of the allowed expenditures varies by state.³⁰ ESAs allow families to customize their child’s education and pay for more than strictly the academics of education. Relative newcomers to educational savings accounts are 529 accounts. The ABLE Act of 2014³¹ amends Section 529 of the Internal Revenue Service Code of 1986 to

create tax-advantaged savings accounts for individuals with disabilities.

Tax-Credit Scholarships—Tax-credit scholarships allow full or partial tax credits when there is a donation to nonprofits (school tuition organizations [STOs] that provide private school scholarships). Eligible taxpayers can include both individuals and businesses. In some states, scholarship-giving nonprofits also provide innovation grants to public schools and/or transportation assistance to students choosing private or alternative public schools (such as a public school outside of the child’s district).

Types of school choice programs:

Vouchers give parents the option to send children to a private school using public funding to pay all or part of the tuition.

Education savings accounts (ESAs) allow parents to receive a deposit of public funds into government-authorized savings accounts with restricted but multiple uses.

Tax-credit scholarships allow full or partial tax credits when there is a donation to nonprofits (school tuition organizations [STOs] that provide private school scholarships).

Individual tax credits and deductions allow parents to receive state income tax relief for approved educational expenses, which may include public or private school tuition, books, supplies, computers, tutors, and transportation.

Individual Tax Credits and Deductions—

Individual tax credits and deductions allow parents to receive state income tax relief for approved educational expenses, which may include public or private school tuition, books, supplies, computers, tutors, and transportation. Tax-incentive programs provide mechanisms for any individuals (not only parents) or businesses to either (1) spend money on private school or educational expenses for their child; or (2) donate money to nonprofit organizations that are charged with issuing private school vouchers in the form of “scholarships” to students.

2. State Voucher Program Constructs for Students with Disabilities

According to the 2016–2017 *School Choice Yearbook*,³² there are 52 private school choice programs in 26 states and Washington, DC, serving more than 442,000 students. Eleven of those programs are state voucher programs that are intended exclusively for students with disabilities: Arkansas, Florida, Georgia, Indiana, Louisiana, Ohio, Oklahoma, Utah, Mississippi, North Carolina, and Wisconsin. Five states currently have targeted ESAs for students with disabilities: Arizona, Florida, Mississippi, North Carolina (which will start in 2018–2019), and Tennessee.³³ Only two states, South Carolina and Arizona, have tax credits (scholarship or individual) for students with disabilities.

All the states allow use of the funds for tuition, and some allow for the use of funds to pay for fees associated with the student’s

education. All states allow students to leave voucher programs and return to public schools at any time. Specific states have carve-outs in North Carolina, for example, students are treated as parentally placed under IDEA. However, prior to the start of each school semester, the parent of an eligible student may submit documentation of the special education, related services, or educational technology costs the parent anticipates incurring in that semester for preapproval of the authority. In Ohio, under its Autism Scholarship Program, schools must comply with nondiscrimination codes and may be entitled to transportation. The purpose of the scholarship is to give the parent of a qualified special education child the choice of sending

the child to a special education program instead of the one operated by or for the school district in which the child is entitled to attend school. This allows the parent to receive the

services prescribed in the child’s individualized education program once the individualized education program is finalized. The services provided under the scholarship shall include an educational component. Under Ohio’s Jon Peterson Special Needs Scholarship Program, students who receive the scholarship are considered unilaterally privately placed students (this is the same for all the scholarship programs discussed in Ohio for students with disabilities). Therefore, these students are not entitled to a FAPE. The public school is required to evaluate, implement the child’s IEP, annually review the IEP, and reevaluate it if necessary. The parent is entitled to mediation and independent education

Table 1: States with Choice Programs Designed Specifically for Students with Disabilities (See Appendix B for more detailed information.)

State	Voucher Programs	Education Savings Account	Tax Credits (Scholarship or Individual)
Arkansas	X		
Arizona		X	X
Florida	X	X	
Georgia	X		
Indiana	X		
Louisiana	X		
Mississippi	X	X	
North Carolina	X	X	
Ohio	X		
Oklahoma	X		
South Carolina			X
Tennessee		X	
Utah	X		
Wisconsin	X		

evaluation (IEE) related to the development, but not implementation, of the IEP. The Ohio Department of Education will investigate complaints about violation of scholarship rules, but not about implementation of IEP or FAPE. Families can file due process complaints related to evaluation or identification, not to whether the student has received FAPE.

In the District of Columbia, despite the fact that the statute states that nothing in this Act may be construed to alter or modify the provisions of IDEA (20 U.S.C. 1400 et seq.), students are also treated as unilaterally privately placed. Provision of necessary services for each student are limited in scope to a menu of options—transportation, fees, and tuition. In Virginia, the scholarship tax credit is means tested, and while not intended exclusively for

students with disabilities, it has a provision stating that the eligibility of students with disabilities must comply with the proscribed means tests.³⁴ Wisconsin's program only requires private schools to offer services to assist students with special needs if they can provide them with minor adjustments. In South Carolina, schools need to provide specially designed programs or learning resources to provide accommodations to students who require them.

In Florida, Georgia, Arkansas, and Oklahoma, parents using vouchers must sign agreements to relieve public schools of any legal obligations, under IDEA or otherwise, to provide the student's education. The private school is not required to implement the IEP or to provide services, supports, or accommodations.

Mississippi's Nate Rogers Scholarship for Students with Disabilities is the nation's only program that exclusively serves students with speech-language therapy needs. EdChoice experts state that this scholarship has very few children or schools participating because the program is very restrictive (K–6 only and speech impairment must be the primary disability) and is perceived to be too restrictive on student eligibility, funding, and school regulations.³⁵

While the push for vouchers has caused growth, the Colorado and Tennessee programs have been terminated. Until 2017, Colorado had a voucher program, the Douglas County Choice Scholarship Program, which was the country's first district-created, nearly universal school voucher program that included students with disabilities. It was enacted and launched in 2011. Although 271 parents applied for vouchers to be used at more than 30 private schools approved for the program, the Choice Scholarship program was enjoined by the District Court of Denver County on August 12, 2011, in a lawsuit filed by the American Civil Liberties Union, Americans United for Separation of Church and State, several Colorado organizations, and some taxpayers. Ongoing litigation made it impossible for children to utilize the program. The Colorado Supreme Court ruled the program unconstitutional in June 2015 because it

channeled public funds to religious schools.³⁶ The case was sent to the U.S. Supreme Court on appeal. In June 2017, the case *Taxpayers for Public Education v. Douglas County School District*³⁷ was sent back to the Colorado State Court,

following a ruling by the Court on a similar case in Missouri. In the case of *Trinity Lutheran Church v. Comer*,³⁸ a Missouri church sued after being denied state funding for a preschool playground because the Missouri state constitution forbids financially supporting

a religious institution. The Supreme Court ruled 7–2 that the state's original decision violated the U.S. Constitution's protection of the free exercise of religion by excluding churches from state programs with a secular intent.³⁹ While the case was tied up in court, Colorado's Douglas County School Board voted to terminate its voucher program in December 2017. The vote was again

unanimous (6–0, with one member who had been a plaintiff in the lawsuit against the voucher program abstaining).⁴⁰ The program was started in an affluent section of

town by parents who "reported serious or very serious problems in their public school" (fighting, drugs/alcohol), but the program was ultimately terminated by the very body that created it because of immense public and political pressure and the ongoing litigation.⁴¹ In January 2018, the Colorado Supreme Court dismissed the case as moot.⁴²

In Florida, Georgia, Arkansas, and Oklahoma, parents using vouchers must sign agreements to relieve public schools of any legal obligations, under IDEA or otherwise, to provide the student's education.

While the push for vouchers has caused growth, the Colorado and Tennessee programs have been terminated.

3. Education Savings Accounts

Education savings account programs give parents the power to use their children's state education dollars on a variety of educational options and obtain a deposit of public funds into government-authorized savings accounts, with some restrictions, to cover private school tuition, private tutoring, and other types of customized learning materials and services.

According to the literature and as described in the focus groups, eligible families can use these private accounts to pay for educational expenses for their children. Like vouchers, ESAs can be used for private or religious school tuition. Unlike vouchers, ESAs may be used for a variety of other needs, including public school-related expenses such as tutoring, uniforms, textbooks, therapists, homeschooling expenses, and school supplies, often without accountability to or transparency for taxpayers.⁴³ Some states like North Carolina offer debit cards to families to use to pay for services not covered by the ESA program, although there are worries that this system may be open to fraud.⁴⁴

A report issued in January 2018 by National Education Policy Center (NEPC) describes the

creation of ESA programs that allocate the funds directly to the parents rather than directly to religious schools.⁴⁵ We will explore the effect of breaking the funding chain directly to private schools and the ensuing effects on rights in more depth in the legal analysis section below.

Although some states' statutes, such as Arizona, are silent regarding the effect of a voucher on IDEA or other rights, in most states, parents sign contracts when they use vouchers, to take full legal responsibility for the education of the student and releasing the public school from educating the student.

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529 and ABLE Accounts

A relative newcomer to educational savings accounts are 529 accounts. The ABLE Act of 2014⁴⁶ amended Section 529 of the Internal Revenue Service Code of 1986 to create tax-advantaged savings accounts for individuals with disabilities. These tax-advantaged savings accounts are funded

[I]n most states, parents sign contracts when they use vouchers, to take full legal responsibility for the education of the student and releasing the public school from educating the student.

solely by family assets and can be used to cover qualified disability expenses such as, but not limited to, education, housing, and transportation. Education expenses can include tuition, supplies, and the like for K–12 or postsecondary education. Individuals with disabilities and their families can

save up to \$14,000 a year in an ABLE account, and importantly, these funds do not count toward the \$2,000 asset limit for many federal programs such as Social Security. As of May 2017, a total of 21 states had ABLE programs, and families did not need to be a resident to open an ABLE account in another state (meaning the program is available to those who do not have an ABLE program in their home state).⁴⁷

In 2017, the new tax law expanded the qualified use of 529 accounts by allowing withdrawals of up to \$10,000 per year (per child) for public, private, or religious K–12 schools.

Home schooling families

are also allowed to

use 529 funds toward educational expenses.

The new legislation

also supports funding of ABLE accounts designed

for use by people with disabilities. Under the new law, parents can roll over 529 plan assets to an ABLE account. Both accounts must have the same beneficiary or a member of the same family, but they can roll over up to \$15,000 in 2018. Now families will have more flexibility in planning for the futures of children with disabilities, where predicting possible needs can be a challenge.⁴⁸

These opportunities certainly may benefit those who can afford to put money into such an account, let the money grow, and avoid capital gains tax on what was earned over time.

Other tax breaks exist too, as 35 states offer a tax deduction or credit when families deposit money into 529 plans.⁴⁹ While some families are celebrating this news, others see the opportunity gap continue to widen, not only because they don't have the funds to invest, but also because private schools might just raise tuition as a result and integrate 529s into the financial aid formula.⁵⁰

4. Federal Voucher Program

The nation's only federally funded school voucher initiative is in the District of Columbia, the Washington, DC Opportunity Scholarship Voucher

Program. This program is not targeted solely for students with disabilities. Programs funded and administered by the federal government must be consistent with and

uphold all provisions of applicable federal, state, and local laws. The U.S. Department of Education cannot create a program that attempts to avoid or lessen obligations under the law.

As of early 2018, the Department of Education asserts that there are no plans for a federal voucher program. Instead, it plans to provide money (\$250 million in FY 2018) through a competitive grant program.⁵¹

The legal implications of these voucher programs and educational savings account constructs are explored in more depth in Chapter 5.

The U.S. Department of Education cannot create a program that attempts to avoid or lessen obligations under the law.

Chapter 2: The Fiscal Impact of Vouchers and Scholarship Tax Credits on Public Education

A. Lack of Consensus

The debate about resources and costs of vouchers includes students with disabilities, since they often need services, technology, and accommodations. Often these resources can be provided at little to no cost, but some may involve considerable expense. If schools (public or private) are struggling to provide students' basic needs, students with disabilities may be disproportionately at risk of not receiving an equitable education. Many advocates oppose voucher programs based on the concern that they and other choice options redirect public money to privately operated education enterprises, which often operate for profit. They believe taking money from taxpayers for choice programs harms public schools by siphoning off students, resources, and funding while reducing the ability of public schools to serve the full range of student needs and interests because their hard costs, such as those for utilities, maintenance, transportation, and food service remain fixed even when public school enrollment drops.⁵² For example, the National Center for Learning Disabilities issued a report in 2017 asserting that state voucher, ESA, and tax incentive programs are "draining funding from public schools, leaving the public schools with far fewer resources with which to serve their students."⁵³

Conversely, EdChoice asserts that as enrollment declines, the per-student funding amount for the remaining public school students actually increases. This statement is backed up by research in some cities. Public data shows that states and cities typically increase their per-student spending in the years following the inception of school choice programs. Milwaukee and Cleveland are examples. By 1992, Milwaukee's school choice program had been in place for two years, and according to the U.S. Census Bureau, the city's public schools spent \$9,038 per student; by 2011, that figure had swelled to \$14,244—a 58 percent increase. Cleveland's school choice program launched in 1997, when the city was spending \$9,293 per student. Cleveland was spending \$15,072 per student in 2011—a 62 percent increase over 15 school years.⁵⁴

Others suggest that the net impact on taxpayers is actually twofold: (1) the savings that come from the difference between the voucher and the per-pupil revenue at district schools, for those who would have attended them in the absence of the voucher program, minus (2) the voucher costs for students who would have attended private schools anyway.⁵⁵ To many, vouchers seem to be a giveaway to the state's cash-strapped religious schools at the expense of struggling public schools.⁵⁶

As a result of the recent changes in the federal tax code, local schools and state governments may also change state rules to bring in additional revenue, but some feel it may actually increase the equity of the U.S. tax system. An opinion⁵⁷ in *Forbes* magazine recently asserted that “the national average annual cost of public schools exceeds \$11,000 per student and even the most frugal states spend \$7,000 per student. Even granting that the marginal cost of educating one additional student may be less than the average cost, when parents remove a kid from public school to enroll her in private school, they are saving the local school system and state government considerably more than after tax \$1000 per child.”⁵⁸

B. Increasing Tension—Who Should Get Resources

There is an ever-widening division about whether a national move toward privatization using public funds should occur. Critics such as the National Education Association (NEA) refer to voucher programs as “schemes” and assert that vouchers lack proper accountability and oversight and strip legal protections for parents and their children.⁵⁹ The National Coalition for Public Education (NCPE) states that private schools accepting voucher funds do not adequately serve students with disabilities, often denying them admission and subjecting them to inappropriate or excessive suspensions or expulsions. NCPE has also raised concerns about whether private schools provide the same quality and quantity of services available to students in public schools, including

those mandated under IDEA and Section 504. Advocates in Indiana frame vouchers as a “give-away” to cash-strapped religious schools at the expense of struggling public schools and worry that private schools do not accept students with disabilities.⁶⁰ The National Disability Rights Network (NDRN)⁶¹ believes that scarce and needed resources to maintain the quality of our public school system should not be diverted to publicly fund private school programs. Rather, limited public funds should focus on making sure that every public school and teacher has the resources they need to be effective in meeting the academic and behavioral needs of all

students, but particularly the needs of students with disabilities.⁶²

There are also valid concerns that private schools participating in voucher programs

are typically religious. Data from schools in Wisconsin shows that out of 28 schools accepting vouchers, 22 are parochial schools,⁶³ and studies of Louisiana schools show that private schools participating in the Louisiana Scholarship Program (LSP) are overwhelmingly Catholic.⁶⁴ One quarter of Indiana families that used vouchers said a religious environment was an important factor.⁶⁵ In contrast, families in this research study’s focus groups and interviews who indicated their child attended a religious school cited reasons having to do with services offered, proximity to home, and class size. No one in the focus groups cited a preference for religious schools as the reason for choosing that school. These findings suggest that while religion is a compelling factor for nondisabled families

There is an ever-widening division about whether a national move toward privatization using public funds should occur.

to use vouchers, it may not be as important to families of students with disabilities. More research is needed on this topic.

Many participants in the focus groups pushed back on the concept of “choice,” feeling that use of public funds for voucher programs is not a viable choice for those who do not have money to supplement the voucher amounts, who cannot provide transportation to the private school or programs purchased with a scholarship for their children, or who are uninformed about the educational options available to their children. Others have told stories of long delays in services, such as a mother who shared this story:

We waited a year without proper [special education] services to be eligible for the scholarship, we spent a year in a private school that did not provide appropriate services, and we transferred back to the public school and started the eligibility and evaluation process to begin again. Four years that we cannot get back in my child’s educational development.⁶⁶

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Many participants in the focus groups pushed back on the concept of “choice,” feeling that use of public funds for voucher programs is not a viable choice for those who do not have money to supplement the voucher amounts, who cannot provide transportation to the private school . . .

Still more families told stories of rejection from private schools and what they saw as a disincentive for private schools to serve students with disabilities—a disturbing trend in a program funded with public dollars. When the Texas

legislature was debating a school choice program, Rachel Gandy of Disability Rights Texas (the state’s mandated Protection and Advocacy program) said in an interview: “Those who have the choice might not be the families of kids with disabilities, especially severe disabilities and mental illness,” but she

says that it is “likely that choice may fall with the private school.” Gandy reported that a parent who testified before the legislature during the

regular session had been rejected by 13 private schools.⁶⁷ Others who participated in focus groups for this report poignantly reminded researchers that while it’s great that many children have parents or caregivers that can stay at home with children to locate or implement choice programs, finance

the remainder of private school tuition that is not covered by a voucher, or even know about their education options, others simply cannot. As a participant in one focus group stated:

[Many other families] literally cry because of the students that are abandoned in the public schools that can't take advantage of an ESA and can't have the one parent that they have quit their job to stay home [to locate or facilitate participation in a private school or coordinate private services and programs]. It's such a privilege. That is such a privilege that 90 percent of [the families in] this state cannot do. They can't quit their job to stay home and go to endless meetings. They give up. They can't access ESA because they don't have the right label, or they can't get it or whatever or they don't know it exists.

It makes me so angry because instead of fixing the problem, we're just creating two separate systems and it's not fair and it's not okay.⁶⁸

Typically, vouchers still leave parents with some tuition or fees they must cover out of pocket. Opponents to vouchers predict that the gap between who can and cannot afford to supplement voucher funds will never be completely bridged because as voucher amounts increase, so will the tuition and fees at the private school.⁶⁹

On the flip side of the issue, the current Administration and other pro-school choice organizations such as the Friedman Foundation for School Choice (now EdChoice) support vouchers, noting that many parents feel that the quality of public education is declining.⁷⁰ They believe that providing school choice to students with disabilities allows unhappy families to find a program that meets their children's individual

needs. They also assert that policies such as school vouchers and scholarship tax credits can save taxpayers money because, while total revenues to school districts may decrease, per pupil funding actually increases because districts keep a portion of funds for students no longer served.⁷¹ They also assert that school choice reforms will ultimately improve public education through the introduction of market forces that expand customer choice and competition between schools.⁷²

Also, in support of vouchers, many families interviewed shared intense feelings about the positive outcomes of voucher programs and

ESAs, such as a mother of a 13-year-old student with autism:

I had some success [with public school]

that was variable just based on the fact of who the teacher was and how well they knew what the expectations were from the law, what they should be providing. And then the next year, you know, you could go from heaven to hell fairly quickly, and so that's what was happening. There was this roller coaster of, Great teacher. Oh, my gosh, life is awesome. And then a teacher that's not as involved and, oh, my gosh, now my home life is destroyed. I've got temper tantrums for five or six hours a night, property destruction, can't go out to eat, you know what I mean. And it was all dependent on those hours that we're spending at school. It's been so life-altering, you know, going from where we were and not knowing if I was going to have to put him in an institution and not being able to go to family holidays, and you know,

Typically, vouchers still leave parents with some tuition or fees they must cover out of pocket.

just—you know, I get emotional when I talk about this, but just even getting undressed to go in the shower and looking like a battered woman, you know, and it's my beautiful son that's doing these things. And I know that he can be happy. And then having the ability to put him in an environment where he was appreciated, where he was respected, where he was given agency, which is what we all want. We all, we all want to be able to communicate. We all want to be spoken to with respect and with dignity and we all want some sort of agency over our physical bodies and over, you know, how we're taking in the information. The difference has been amazing.⁷³

Families are desperate for effective individualized services, positive school experiences, and satisfactory outcomes. Many are frustrated at the lack of actual choice, and their inability to receive quality services from either public schools or schools of choice. Others are adamant that choice is absolutely worth the risk. One theme that researchers heard over and over in focus groups and interviews is that parental control is important—even if there are no guarantees. Some parents are frustrated that special education and civil rights must be given up in order to use vouchers or ESAs and are adamant that civil and legal rights must be protected. Others see the loss as meaningless because they feel that they or their child did not actually receive any rights. The GAO report

indicated similar views from families they interviewed.⁷⁴ Families that support and use vouchers are striving for outcomes for their children that include academic progress, but they also noted that equally and sometimes more important were self-esteem and acceptance.

I could make the school—dragging, kicking, screaming, do what the IEP said. But what I couldn't do was make them care about my daughter. I couldn't make them show empathy. And so she was so shut down. She didn't talk to anybody. She wouldn't talk to anybody who was typical. Like the

only friend she had; the only kids she would communicate with were other kids with disabilities and it was incredibly sad. She had no confidence at all. And now page forward. She attends a private school with ESA funds. She's a leader

in her peer group. She's like wanting to go and read, she is so excited about school and everybody knows her. She'll like go get a book and sit with another kid. Like everybody knows who she is as an individual. For us, it simply changed everything, like how assertive she is in the community now, like going places and she's talking to people. Things I never thought she would do.⁷⁵

Many families that had several children used different options for each child in traditional public

Families are desperate for effective individualized services, positive school experiences, and satisfactory outcomes. Many are frustrated at the lack of actual choice, and their inability to receive quality services from either public schools or schools of choice.

schools, private schools, and charter schools. The narrative of the focus group discussions brought to light a disturbing perception: that families are pitted against each other for scarce resources. On one hand, there are those who are able to access and benefit from vouchers, and there are those who cannot because of limits in eligibility requirements, lack of resources needed to pay for what the voucher does not cover, inability to provide transportation, or lack of available private schools.

A few national organizations, for example, the Council of Parent Attorneys and Advocates (COPAA)⁷⁶ and the National Center for Learning Disabilities,⁷⁷ do not have a formal position on vouchers in general, although both oppose the use of federal funds for school choice largely because of the loss of IDEA and other civil rights. The Center for American Progress and other such organizations don't take a position

on the use of vouchers, but they strongly caution that the use of school vouchers is equivalent to the student missing one-third of a year of classroom learning.⁷⁸ Moreover, they maintain that the focus on school choice through a voucher system may put the civil rights of students with disabilities at risk. If federal or state IDEA funding is used to fund vouchers for private schools, they recommend that public schools must remain accountable not only to parents and students, but to the government as well.⁷⁹ At the very least, a private school accepting a special education student through a voucher system should be required to show some proof that a special education program has been implemented at the school or for specific students. Ideally, a family could use a voucher and still receive the same individualized attention, planning, and detail required under IDEA.

Chapter 3: Issues Specific to Students with Disabilities

A. Eligibility

According to NCD's survey and a review of state documents, school voucher and ESA programs consider various factors when determining whether students are eligible to participate. For example, 7 of the 20 existing voucher programs are limited to students who reside in specific areas or school districts, or those who are attending low-performing public schools, whereas the remaining voucher programs and all ESA programs are open to qualifying students statewide.⁸⁰ For instance, Wisconsin has a program specific to Milwaukee and another for Racine, and Ohio's EdChoice Scholarship Program focuses on those students who attend low-performing schools. In contrast, Indiana's Choice Program is open to eligible students across the state. In addition to students' place of residence, almost all voucher and ESA programs used disability status or family income as eligibility criteria, according to GAO surveys.⁸¹

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Each state determines whether the student enrolled in public school is eligible for a designated time period, meets a geographic limit, or a specific diagnosis. There is also variation as to the amount of time for which the voucher is approved. Some individuals remain eligible for the remainder of their school career, while others must reapply every two to three years. Some of the ESAs, such as Florida's Gardiner, allow unused funds to be rolled over and used

for postsecondary schools or programs in private or public institutions.

Recently, Arizona passed a bill to expand the targeted audience eligible for special needs scholarships to allow brothers and sisters to be eligible, and in 2017 it passed a bill that expanded eligibility to make any public school student

eligible, up to limited numbers. The bill also includes a provision that allows families that can demonstrate low income to receive additional funding above the current formula of 90 percent of funds that would go to a traditional or charter public school.⁸²

Unlike public schools, a private school or program provider participating in a voucher or scholarship program is not required to accept a student who is eligible under the state program. Nor is it required to alter any of its business practices, policies, or curricula under the program. A parent/guardian must comply with all the provider's policies.

B. Enrollment of Students with Disabilities in Voucher Programs

The size of traditional voucher programs varies significantly. During the 2016–2017 school year, voucher systems enrolled between zero and 34,299 students, with the four largest programs in Florida (McKay Scholarship Programs for Students with Disabilities), Indiana (Choice Scholarship Program), Ohio (Educational Choice Scholarship Program), and Wisconsin (Milwaukee Parental Choice Program) serving 73 percent of the nation's students with disabilities who use vouchers.⁶³ The total number is 88,609 students across all programs serving exclusively students with disabilities.⁶⁴

States providing these school choice funds typically require that private schools meet minimum standards under state law in order to accept voucher funds. State law also sets parameters for student eligibility. Targets can be students who meet a specified income threshold, students who attend chronically low-performing schools, students with disabilities or specific types of disability, or students in military families or foster care.

C. The Reasons Parents Choose Vouchers

In the age of individualization and personalization, parents want the opportunity to decide how their children are taught, including the curriculum, the pedagogical approach used by teachers, and the services their children receive. A recent survey of parents conducted by the U.S. Department of Education reported high levels of parental satisfaction with their children's education, though the percentage of "very satisfied" parents varied by school type. Satisfaction levels

were the highest among private school parents and among parents whose children are at charter schools and public district schools of choice reporting lower but similar rates of satisfaction. Parents of students attending

district-assigned schools are the least likely to say they are "very satisfied" with their child's school.⁶⁵ Public perception and the media suggest that parents use vouchers primarily to permit their child to attend an academically stronger school. Focus group participants indicated that higher expectations of school for students with disabilities were in fact one reason they decided to use a choice program.

But an intriguing study from the Education Research Alliance for New Orleans suggests that parents' use of vouchers doesn't always work that way. Parents, especially low-income parents, actually show strong preferences for other school qualities such as the school's location or extracurricular activities.⁶⁶

Unlike public schools, a private school or program provider participating in a voucher or scholarship program is not required to accept a student who is eligible under the state program.

The study indicated that although parents may say they care about academics, this is not a critical factor when they actually choose a school. When researchers asked parents to rank schools, regardless of what they gave as preferences for their school, a school's distance from home most affected the parent rankings. Even if a parent assigned a letter grade of C to a school close to home, they would still choose that over a B school that was more than one mile away. Extended hours and extracurricular activities also mattered, especially for lower income families.⁸⁷

While many school choice proponents claim that vouchers are necessary for socioeconomic and educational equity, this study suggests that parents from the most economically disadvantaged families may make decisions differently from wealthier families. "Quality" of schools may include location or extracurricular offerings, and not just "academic quality," as wealthier families or state assessments may define *quality*. If this is true, vouchers may not diminish achievement gaps within a school district or city. For example, while wealthier families may use vouchers to move children to faraway schools with high academic achievement rates, lower income parents may not be able to reconcile moving a child to a school far from home if transportation or a lack of after-school programming would cause significant problems for the family.

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Similarly, parents of students with disabilities may not use vouchers in expected ways or make choices about schools based solely on traditional definitions of academic excellence. In the research for this report, parents of students with disabilities in focus groups described many other reasons for using vouchers or ESAs to choose their children's school, including the following:

- More involvement and control in decisions about their child's education.
- More equitable or thorough process of assessment of needed special education services (e.g., children would be assessed for disabilities through schools in order to qualify services), including a willingness to acknowledge signs of less visible disabilities like dyslexia.
- Including and respecting parental involvement in the IEP team.
- Better special education services and willingness to implement individualized education programs (IEPs), including opportunities for direct instruction and research-based interventions.
- Safer schools, including schools with no bullying.
- Higher expectations for students with disabilities.
- Hope that children with disabilities would perform better academically, socially, or

behaviorally in a different setting or better school.

- Opportunity to match educational options with family lifestyle (e.g., homeschooling for religious reasons).

Many parents who use vouchers say that the powers and protections in IDEA statutes and regulations only existed for them in theory. Battling a school district over their child's education was either wearing them down, or they did not have the time, money, or knowledge to go to battle.⁸⁸ As one professional in the focus groups noted:

Parents tell me they feel they are not receiving the support and the services, or that their child's

IEP is not being implemented as written in the public school system, the typical public school classroom, and

therefore they utilize a voucher looking for better services. There is not one or two disability categories that use vouchers [; it ranges] from a child who has an attention disorder, autism, and [d] intellectual disability. Probably the most difficulty for placement or for finding appropriate services are [sic] for children who have emotional disorders.⁸⁹

Again, some choose schools for reasons such as proximity of school and availability of after-school programs or sports,⁹⁰ as these two parents noted:

I use ESA for one of my children. Ultimately, I got to a place where I didn't feel like—

I didn't feel like the public-school system would provide what she needed or could. I am an advocate for students with disabilities. I work with lots of families. And for me, even if what I do, even with all the litigation that I did with the school district, state complaints, federal complaints, due process complaints, OCR, no matter what I did, I could make them do it short term but then the follow-up would be horrible and then we would be back and it was like Groundhog Day.

We were in a rural preschool. Their model was ten typical students to five special needs students, and in that environment, he thrived. Then we moved up to the

city, and I tried to open enroll him into the school that we had chosen to buy a house near because of the quality of the school and the

fact that it appeared with five speech therapists on staff that they had the staff to manage his communication issues. And they wouldn't open enroll him, and I couldn't figure out why because they open enroll half of the kids in the school. And they said, oh, well, he needs a life skills program. He had already been included in a regular kindergarten, they didn't even know him.

Focus group and interview respondents overall indicated the following reasons for choosing to enroll in a voucher or ESA program: bullying or safety concerns in the public school; ignoring the signs of dyslexia and refusing to evaluate

Many parents who use vouchers say that the powers and protections in IDEA statutes and regulations only existed for them in theory.



or provide specific programs such as Barton (an Orton Gillingham-based intervention that can be implemented by people without training⁹¹), even though they have trained personnel; forcing parents to do a private evaluation that costs thousands of dollars, and then not accepting any of the recommendations; not implementing the IEP or 504 plan; refusing to involve parents meaningfully or listen to the parents' concerns and suggestions; their child being stressed out, refusing to go to school, acting out behaviorally; lack of research-based interventions; and as one parent in Florida put it: "I ran into wall, after wall, after wall in public school."

For students with more complex disabilities, parents and professionals in NCD's research suggested that vouchers may also be used to send students to segregated schools for students

with disabilities. Some parents participated in specific state programs targeting students with higher needs (i.e., Ohio's Jon Peterson Special Needs Scholarship Program, Arizona Empowerment Education Savings Account, and Florida's Gardiner Scholarship Program). They suggested that these programs also mainly support students attending schools designed specifically for students with disabilities. However, as the researchers recognized, it was clear that there was a lack of concrete data to back up this anecdotal evidence. There is no centralized repository for comparing data on students enrolled in voucher programs by disability category with the level of segregation or inclusion or by whether a private school only serves specific categories of students by disability label. Websites such as EdChoice or

state departments of education frequently share overall numbers of students enrolled using school choice programs, the number of private schools that students attend, or the amount of funds spent overall.⁹² This data may not be aggregated by type of disability, use of special education services or 504 plans, or whether the schools only serve students with disabilities.⁹³

D. School Choice Programs for Students of Color with Disabilities

Some proponents argue that students who will benefit from vouchers the most are students of color. The reality does

not necessarily support that assertion,⁹⁴ although, admittedly, the issue is complicated. The 2015 PDK/Gallup poll showed that 53 percent of the general population supports public school

choice, but the percentage was even higher for African Americans (64 percent). When asked if they would support using public funding to support families choosing private schools, levels of support dropped to only 31 percent of all respondents and 33 percent of African American respondents. These conflicting results indicate two things: (1) the evidence does not support a general assumption that vouchers are “extremely” popular with African Americans, and (2) when respondents understand that vouchers may divert public money to private schools, support for school choice proposals drops considerably.⁹⁵

Research on vouchers also shows that such programs often benefit wealthier white families,

even when they are intended to protect and uplift students of color or students at risk. One example is the Indiana School Choice Program. When it began in 2011, it was billed as a way to help poor and minority children escape “bad” public schools. Since then, the percentage of white voucher recipients has increased from 46 to 60 percent, and the percentage of black recipients has dropped from 24 to 12 percent. Students receiving vouchers are also increasingly suburban and middle class.⁹⁶ In another example, Florida recently published results from the McKay Scholarship Program, which showed enrollees were 46 percent white, 28 percent Hispanic/

Latino, and 20 percent black/African American.⁹⁷

Proponents of school choice programs assert that choice fosters “social justice” and equity.⁹⁸ Critics, however, point to the racist origins of vouchers. *Brown v. The*

*Board of Education*⁹⁹ deemed that the “separate but equal” standard was unacceptable in public education. At that time, pre-1954, “school choice” was a code for maintaining segregation, and it was only available to white families. For example, Prince Edward County in Virginia operated two high schools: a well-funded high school for white children and a severely underfunded high school for black children, which was overcrowded and lacked a cafeteria, a gymnasium, a locker room, and proper heating.¹⁰⁰ Rather than comply with *Brown*, the county closed all its public schools in 1959 in defiance of the Supreme Court’s decision. However, white children continued their education at the private Prince Edward Academy, a “segregation academy” that would serve as a

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model for other communities in the South. The county's black students were not permitted to attend Prince Edward Academy and could not receive tuition grants to attend other private schools.¹⁰¹

There is tension between national organizational stance and black parents on the use of vouchers, with the National Association for the Advancement of Colored People (NAACP) stating that the answer to inequity and inadequacy of the public schools does not lie in the school choice movement but rather in greater investment in traditional public schools; and black families asserting that families will flock to choice programs in pursuit

of better educational opportunities.^{102, 103}

While this debate is not specific to students with disabilities, it mirrors the rift outlined earlier between families of students with disabilities and national organizations serving their interests.

One reason disability advocates are concerned about voucher programs is the push-out of students of color. The National Disability Rights Network states that “we regularly hear from our network that students of color who are also students with disabilities are removed from voucher schools for disability related behaviors. We sadly are not surprised, as this practice would be consistent with the limited available data regarding removal of students in public and charter schools.”¹⁰⁴

It is well documented that students of color and students with disabilities are suspended, expelled, and disciplined in public schools at

significantly disproportionate rates.¹⁰⁵ The U.S. Department of Education data for 2015–2016 reveals that students with disabilities represented 12 percent of the overall student enrollment. Yet school-level reported data show that

- 28 percent of students were referred to law enforcement or arrested.
- 51 percent of students were harassed or bullied based on their disability.
- 71 percent of all students were restrained.
- 66 percent of all students were secluded.
- 26 percent of students received an out-of-school suspension.
- 24 percent of those students were expelled.

Students of color with disabilities also represent two-thirds of students who are secluded from their classmates or restrained to prevent them from

moving—even though they make up only 12 percent of the overall student population.¹⁰⁶ Students of color with disabilities experience the highest rates of exclusion. With the exception of Latino and Asian American students, more than one out of four boys of color with disabilities—and nearly one in five girls of color with disabilities—receives an out-of-school suspension. Notably, the vast majority of suspensions are for minor infractions of school rules, such as disrupting class, tardiness, and dress code violations rather than for serious violent or criminal behavior.¹⁰⁷

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The glaring and well-documented disparity between students of color with disabilities and their nondisabled white peers has devastating consequences for this student cohort: from undermining learning to depriving students of instruction time to tragically altering the life trajectories of millions of students. We have long known that suspensions are associated with negative student outcomes such as lower academic performance, higher school dropout rates, failure to graduate on time, decreased academic engagement, future disciplinary exclusion, and entry into the juvenile justice system.¹⁰⁸

Excessive discipline causes many students to be held back in school and others to drop out, and it contributes to the school-to-prison pipeline. Students of color who are forced to repeat a grade or who drop out altogether have an increased likelihood of ending up in prison.¹⁰⁹

The Center for Civil Rights at UCLA's Civil Rights Project estimated days of missed instruction and found that, nationally, black students with disabilities lost 119 days of instruction (per 100 enrolled), which is 76 more days than the 43 estimated to have been lost by their white counterparts.

Finally, exclusionary discipline practices have an indirect adverse effect on nonsuspended students by negatively affecting their academic achievement. A three-year study of more than 17,000 students disclosed that high rates of school suspensions harmed math and reading

scores for nonsuspended students.¹¹⁰ In addition, such practices contribute to a negative school climate both in and outside the classroom.¹¹¹

We only know of these disproportions in discipline and exclusion because of the extensive data collected on public schools by the federal government. No similar data is collected on private schools. It is possible that private schools funded through choice programs may have less disproportionate discipline. However, in the absence of comprehensive monitoring and data collection, we will not know. The report cautions that policymakers must consider the origins of vouchers and their impact on

segregation and support for public education. No matter how well intentioned, widespread voucher programs without oversight risk exacerbating segregation in schools and leaving the most vulnerable students

and the public schools they attend behind.¹¹²

Most of the voucher programs provide limited or no disability-related services. ESAs typically do allow use of funds for services that vary widely in accordance with the student's needs.

E. Provision of Disability-Related Services

As explained earlier, providing disability-related services and describing what a program covers or allows vary across voucher type, state or private school. Most of the voucher programs provide limited or no disability-related services. ESAs typically do allow use of funds for services that vary widely in accordance with the student's needs.

Some families in the focus groups shared concerns that private schools were not providing specialized services, such as speech/language

therapy, and occupational or physical therapy to which the student was entitled, and at times, for which the state had already paid. However, other parents did not experience any loss in services and actually reported a greater ability to find and fund services recommended for their children that some public schools had refused to provide. Among these services were applied behavior analysis (ABA) or tutoring for dyslexia, services that are not available in the public schools (in both voucher programs that do implement the IEP or provide services or under ESA programs). These inconsistencies are highly problematic, with families essentially gambling that services will be the same or better in private schools, even if IDEA protections are not in place.

In Port St. Lucie, Florida, Lynn Ambert's 9-year-old son is eligible for a voucher under

Florida's program that she wanted to use. However, no private school in her area will accept Ayden, who has autism and behavioral disabilities. Even the schools whose websites announced that they offered behavioral programs turned her away.¹¹³

In other cases, socioeconomic status may affect whether or not the loss of services is problematic. For example, transportation was a topic of conversation in the focus groups. Without IEPs, families may lose transportation services for their children with disabilities. This may mean families cannot utilize vouchers unless they are willing to drive several hours a day or pay for accessible private transportation. Many working parents or guardians simply

cannot afford these luxuries of time and money.

According to a report released by the GAO in 2016, federal laws and regulations for two key federal education grant programs require public school districts to provide "equitable services," which may include speech therapy or reading tutors, to eligible private school students. The Department of Education (Education) provides general guidance on these requirements. However, Education's guidance does not specifically address providing these services to students participating in private school choice programs. Education officials said they had not

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received any recent inquiries on the subject, but officials in all four states GAO visited—comprising half of all private choice programs and two-thirds of participating students—

said that vouchers and ESAs complicate their efforts to implement these requirements. Further, although Education officials said that a student's participation in private school choice programs does not affect the federal equitable services requirements, officials GAO spoke to in two states expressed confusion about whether a student's participation in these programs changed their eligibility for these services. Providing quality information to clarify requirements and responsibilities—including adapting to emerging trends—is a key federal internal control. Providing such information would help clarify how to implement equitable services requirements in the context of growing private school choice programs.¹¹⁴

Evaluation of Florida's McKay program shows a different story; it was found that families reported obtaining higher-quality services in a private setting with a McKay voucher than they had received in public schools.¹¹⁵

F. Identification of Students with Disabilities

A study of Florida's McKay voucher program shows that the program offers the promise of slowing growth in the percentage of students identified as having a disability: "The addition of 7.6 private schools that accept McKay funding within five miles of a public school, which is the average, reduces the probability that a student will be identified as having a specific learning disability by 15 percent."¹¹⁶ When voucher programs specifically target students with disabilities, public schools are provided with a disincentive to find children eligible, as each student identified as disabled becomes a voucher-eligible student who could leave public schools and take all of the money devoted to her education with her.¹¹⁷

G. Procedural Protections

Under IDEA, when members of the IEP team, which includes parents, cannot agree on the services that a child should receive, the parents have the right to raise their concerns with a hearing officer and ultimately to take the school district to court if necessary (known as "due process"). Students who are parentally placed in a private school through a voucher do not have these due process protections.^{118,119}

My biggest problem with vouchers is the waiver of FAPE. If FAPE is a right under IDEA, our kids have a right to an education.

Then, you can't waive a right. A waiver of your right to a FAPE is terrible for the student because they can't possibly get the support services [they require]. And once you've waived FAPE, you're done.¹²⁰

Parents often opt for use of a voucher program rather than initiating due process. They may save time and money upfront, however, and may also give up additional compensation if a hearing officer finds a denial of FAPE. Consider this example from a parent in Florida:

My child was self-injurious and would try to put his head through a wall and [bang it on the] floor, and I asked the school for a para [paraprofessional], so he would not hurt himself. They didn't want to [provide one], so I had to threaten to due process. The public school could not give my child the support he needed to be safe, so I am not even talking about educational. I am just talking about keeping the child safe. You know, he would come home with bruises, lacerations, and he would also bite and attack other[s]. So, you couldn't keep anybody in the classroom safe.¹²¹

In taking the voucher offered by the state, the parent was required to supplement the cost of a private education that exceeded the voucher amount. If a hearing officer found a denial of FAPE, the family may have received the full cost of the private placement paid for by the state. Attorneys in voucher states report that if parents obtain representation, voucher programs can serve as a catalyst for due process settlements for private placements because the district reimbursement amount

is less on a voucher than a litigated private placement would cost.¹²²

H. Cost of Private School Is Often a Barrier for Families, Even with a Voucher

Based on interviews with parents and focus groups, the following themes became apparent: Cost is a huge factor in whether families can afford to exercise choice options. Costs include tuition but also other costs. For example, if there are no private schools nearby and the family can't afford to move, one parent needs to assume responsibility for transportation, and often that involves loss of career or limited work options. Many families cannot afford to pay the difference between the voucher amount and the private school,¹²³ which can be as much as a \$7,000 to \$10,000 difference per year. Coupled with the need for one parent not to work in order to provide transportation or manage the process, it's a luxury many cannot afford. Some parents indicated that they took most of the money out of their retirement account to pay for it—feeling thankful they had those resources to use.¹²⁴

Not every parent can afford it and not every parent has the wherewithal to do what you all are doing. And so I think one of the major issues, whether it's a charter school, voucher school, or public school, because they all need the same level of advocacy and commitment and parent involvement, is we need to find a way to provide these

services to the underserved families. And the under-served families with children with disabilities is huge and it may not have to do with socioeconomic level because many of us have to work.¹²⁵

Voucher amounts vary by program. The sum of money received, or tax break provided, may not be equal to the state-funded portion of the cost of a student's education in a public school. In most cases, voucher amounts are not set at rates high enough to cover the full cost of education at a private school, and many of the programs do not cover critical costs to enable full access and participation, such as transportation or fees. The

The range for vouchers and/or savings accounts is from \$2,500 (in Louisiana) to \$27,000 (in Ohio, but only for students with autism). The median amount is between \$5,000 and \$7,000.

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The median amount is between \$5,000 and \$7,000, which in many states is not enough to

cover the full cost of tuition, fees, and supplies for one year of private schooling. Louisiana, for example, provides tuition assistance at 50 percent of the state's per-pupil funding for the student's school district (approximately \$2,500) and cannot exceed the cost of the private school tuition. Families are responsible for paying the difference if tuition exceeds that amount.¹²⁶ For example, average private school tuition ranges from \$4,300 to \$10,000, while the average tuition for a specialized school for students with learning disabilities, according to the National Center for Learning Disabilities, ranges from \$9,000 to \$25,000.¹²⁷ If a private school does not provide disability-related services or does not provide

them in a sufficient amount for a particular student with a disability, a parent of a student with a disability will face even more costs to provide those services themselves.

Some states that offer special education vouchers distinguish the voucher amounts depending on the student's disability label, providing increased amounts for students with a specific diagnosis, such as autism. For example, Ohio's Jon Peterson Special Needs Scholarship Program provides students with disabilities with a range of maximum scholarships based on the student's disability. Ohio also has an Autism Scholarship Program that provides public funding for students with autism to attend their nondistrict school; the amount provided can be up to \$25,000. All students with disabilities are eligible for the Jon Peterson Scholarship, with the amount depending on their disability category.

Voucher amounts are determined through a complex funding formula that considers the average cost to educate a "typical student in a typical classroom" plus the estimated additional costs of providing special education and related services based on the child's disability.

Participants in the focus groups indicated that the vouchers or ESAs were not enough to cover the full cost of the private schools, unless they used a hybrid model (part-time school, part-time home school) or parochial school. Two individuals stated that they had to take money out of their

retirement accounts to cover the additional cost, and several others stated that one parent needed to stop work to manage the process or transport. Only families that can sustain that kind of financial impact can access services using one of the choice programs.

I. Voucher Programs Primarily or Entirely Serving Students with Disabilities

Because IDEA—which requires that students with disabilities be educated with their nondisabled peers to the maximum extent

possible—does not extend to private schools, voucher programs could potentially facilitate segregation of students with disabilities.¹²⁸

As the GAO noted in its 2017 report, almost all of the 27 private school choice program websites provide a directory of participating schools, and some provide guidance

on selecting schools. However, GAO estimates that no more than half of all schools participating in any type of voucher program mention students with disabilities anywhere on their websites. From our review of state department of education programs, that includes publicly available data on who is enrolled in what type of school by disability category; and how long they remain in the voucher program or return to public school.

Additional data needs to be tracked and reported. As one stakeholder interviewed

Because IDEA—which requires that students with disabilities be educated with their nondisabled peers to the maximum extent possible—does not extend to private schools, voucher programs could potentially facilitate segregation of students with disabilities.

for this research indicated, “we found that the states (such as Wisconsin) have a very hard time getting this data from the voucher schools—the state may know who left the public schools (but not in a timely way and not why they left), but they don’t know where they went.”¹²⁹ Given the use of public funds, policymakers, stakeholders, and families should have the data necessary to easily answer this question.

The National Center for Education Statistics (NCES) publishes *The Condition of Education* each year and provides the report to Congress.¹³⁰ This report, at minimum, should include statistics on the use of voucher programs for students with disabilities, by disability and race; and include information on reasons for exiting public schools and characteristics of private schools that they will attend using the voucher or educational savings account funds. NCES does publish fast facts for students with disabilities; the last year covered was 2013 in which they reported 95 percent of 6- to 21-year-old students with disabilities were served in regular schools; 3 percent were served in a separate school for students with disabilities; 1 percent were placed in regular private schools by their parents; and less than 1 percent each were served in one of the following environments: in a separate residential facility, homebound or in a hospital, or in a correctional facility. The data presented is by disability category but does not show whether the private school is only for students with disabilities or any other characteristic. This

is important information to add to data collection and reporting.

EdWeek provided a data snapshot of Florida schools and showed whether the schools are accredited or religious. However, this data snapshot did not indicate whether these schools are only for students with disabilities or whether they are segregated.¹³¹

J. Information Provided to Families

Families that participated in this research noted that information about vouchers or available private schools is often conveyed by word of mouth from

family to family. Some families indicated that the process was easy and smooth, but others stated that they still needed to hire an attorney or an advocate to navigate between programs and access the best option for their child.

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Parents find out the information that they need to make a choice through [state] website, but mostly [by] word-of-mouth. Also, they go to advocates, to organizations, and then they could go to the State Department of Education website but most of them don’t know how [to] navigate it. It’s not the friendliest website. And the DOE does not return phone calls and they are not good about e-mails. It’s hard to get accurate information.¹³²

The cumulative effect of this lack of information is that parents are making choices while being totally in the dark about the school

to which they are sending their child. They are simply hoping for the best, and as some stated in focus groups:

They sign up for a private school, thinking that they are getting all of the benefits one expects of that: better instruction, lower class size. But when they visit

their child might be in the back of the classroom without enough support and not really getting any sort of an education. Or there's like a lower-level untrained person that's supporting the child. That's not what they thought they signed up for. So, then they end up going back to public schools.¹³³

Chapter 4: Outcomes of Students with Disabilities in Voucher Programs

A recent National Public Radio feature asserted that though vouchers bring choices, they do not bring guarantees of educational outcomes.¹³⁴ Certainly, there are no guarantees in public education either; however, there is ample data. In contrast, there is no public data collection showing how well private schools are serving students with disabilities. As indicated previously, parents have to waive their rights under IDEA, including the requirement to demonstrate that the child is receiving a meaningful benefit from their education. Some states require testing, while others do not. The GAO stated that “academic testing and reporting requirements can help the public compare the academic achievement of private school choice students with students in public schools. Two-thirds of private choice programs (18 of 27)—which represented 78 percent of all students participating in voucher and ESA programs in school year 2016–17—require[d] private schools to test voucher or ESA students. Nine of the 18 programs that require testing, nine programs require participating schools to administer their state’s standardized test and six require schools to administer some type of norm-referenced test.”¹³⁵

States vary considerably in terms of academic accountability. Almost half of the voucher programs do not have any testing requirement

or only have to provide parents with a progress report about their children. In other voucher programs, schools must administer a state or a nationally standardized assessment to their voucher recipients; in some programs, participant schools are included in the state school grading system. Among the five states with ESA programs, three states—Florida, Nevada, and Tennessee—require participants to take a standardized test; however, in Florida and possibly other states, students for whom testing is determined not to be appropriate are exempt. In terms of scholarship tax credits, only 8 of the 21 programs require students to take a state or national test.¹³⁶

The results on outcomes overall is mixed. A recent study of DC voucher students found that math scores were 10 percentage points lower for students who used vouchers compared with students who applied but were not selected through the lottery.¹³⁷ Students in Indianapolis who left public schools to attend private Catholic schools, for example, experienced no gains in reading but “moderate and statistically significant average annual losses in mathematics compared with the gains they experienced while attending traditional public schools.”¹³⁸ A study of the effectiveness of Ohio’s ESA program found similar negative effects in math scores that persist over time and cannot be attributed to

“setbacks that typically accompany any change in schools.”¹³⁹

Previous evidence¹⁴⁰ revealed that the Louisiana Scholarship Program (LSP) had large negative effects on student outcomes in both English and math after one year, but researchers say that by the third year, the performance of LSP scholarship users was statistically similar to that of their counterparts in both English and math. Perhaps most surprisingly, the study also concluded that LSP scholarship users were more likely to lose their special education status after two years and less likely to be newly identified as a student with a disability by their third year in the program.¹⁴¹ However, as a September 2017 study states: “These large and statistically significant negative findings, especially in mathematics, are unprecedented among experimental evaluations of school voucher programs in the United States.”¹⁴²

Focus groups and interviews reveal that although there are families frustrated with the experience, or unable to access services and supports, there are many families that are very happy with the outcomes. Several participants in multiple states indicate that they participated in the study specifically to counter media and research reports that dismiss the benefits of vouchers. They describe students who are learning, thriving, and showing an increase in hard-to-measure outcomes, such as confidence and self-esteem. Participants gave many examples of innovative hybrid programs

(part campus based or online, part homeschool or tutoring) and greater choice over curriculum (such as in the case of dyslexia), which has made incredible differences.

And I have to say it’s given us not only the individual, you know, my teachable moments and being able to access or get a Kindle and buy audio books or whatever it is, flashcards, I mean, everything, as long as it’s educationally relatable, you know, it’s been a blessing. But he’s been able to take advantage of the other programs, too, even though they may be short term. For

example, my son is in a monthly program at the local university, which is an awesome opportunity and it’s reimbursed by the education savings account, and it’s the education master students, the physical fitness and Pre-K

students, and the psychology master’s and counseling students. They’re learning mindfulness, they’re learning about their bodies. They have different levels. They have folks that come in that help with speech facilitation, with the learning. It’s geared specifically for intellectual disability. You know, they have enough staff from three different departments, so they’re learning to collaborate. And then the students are getting the benefit of that collaborative education model, and then they modify what they learned [in] one session and that adjusts the next session. So the teachers

Focus groups and interviews reveal that although there are families frustrated with the experience, or unable to access services and supports, there are many families that are very happy with the outcomes.



are learning, the students are learning. It's just been absolutely fantastic.¹⁴³

Compared to public school, there is little to no oversight, aside from the minimum regarding health and safety. The GAO reports that of the 27 taxpayer-funded private school voucher and ESA programs studied by GAO in school year 2016–2017, only 8 of these programs required private schools to comply with annual financial audits, meaning that the states funding these schools often have no clear picture of where their investment is actually going.

The American Federation for Children Growth Fund and the American Federation for Children wrote in the 2016–2017 Yearbook that “quality program design transparency and accountability in educational choice programs are crucial for

program effectiveness, growth and longevity.”¹⁴⁴

These sister organizations “work to ensure that private school choice programs include effective policy and program design, including common sense academic, administrative and financial accountability provisions.”¹⁴⁵ Of note in their recent publication is the number of programs (overall not simply choice programs for students with disabilities) that now have testing and reporting requirements has nearly tripled since 2010. The American Federation for Children (AFC) states that they encourage transparency and accountability as smart public policy that provides educational choice advocates with readily available data and information to showcase program successes. All of the states with voucher programs were marked with strong accountability in health,

safety, and nondiscrimination. Voucher programs did not score as well in the financial section and showed even less accountability in the academic indicators. The weakest accountability ratings were found in the ESA programs. As the report states, increasing transparency and accountability, with readily available data, is essential.

This lack of oversight and transparency can have troubling consequences for students with disabilities and their families. Take this student from Florida: After receiving a \$6,000 scholarship under the McKay program, the family had new hope but found it difficult for their daughter to get an education. The first school she attended closed down. Another refused to enroll her because she was too far behind academically. And a third school expelled her midyear in a dispute over bullying. The family tried to file a complaint and fingers were pointed regarding responsibility, but no action was taken. After three years, the student is back in public school, and with a proper diagnosis and supports, she is thriving.¹⁴⁸

Private schools receiving state aid don't have to track students or tell the state how many students graduate from their schools. Nor need they tell how many are bullied, suspended, expelled, or drop out—some of which are the most basic measures of student success. They don't have to report Civil Rights Data Collection (CRDC) information for inclusion in the national data collection on numbers of students who are suspended and families indicate that can create problems because suspension or expulsion is easier in private schools. If a student is served under IDEA, it is much harder to suspend long term or to expel a student with a disability from a public school than a student without a disability.

Except in certain serious cases, public schools must go through a process to determine if a student's misbehavior is a manifestation of his or her disability.¹⁴⁷ Private schools have no such obligation. A recent *Orlando Sentinel* investigation found several instances of private schools fudging health and safety records and hiring staff with criminal backgrounds. The state was often slow to catch the misdeeds and respond.¹⁴⁸

Others feel that regulations over private schools, such as the requirement of many states that the private school be in operation for a specified period of time before it can enroll students, create unnecessary barriers to new schools.¹⁴⁹ Parents in focus groups often told competing tales of schools that were shut down for fraud on the one hand; and of schools with very strict oversight of uses permitted for educational savings accounts, on the other hand. For example, one focus group parent stated the following:

And let me say that with the Gardiner, we're not out there just willy-nilly as parents picking stuff. I mean, we have to submit everything. It has to be approved. Everything we do has to be submitted with a paragraph or a few sentences or more sometimes that explains the educational benefit tailored to your child.¹⁵⁰

As a recent GAO¹⁵¹ report showed,

- One-third of the taxpayer-funded private school voucher and ESA programs in 2016–2017 had no academic testing requirement. Officials in two of the programs GAO studied in greater depth indicated that some private schools were unfamiliar with or unequipped to administer standardized tests, and stakeholders told GAO this was

especially true at some of the smaller private schools.

- Only one-third of the programs require that schools publicly report test results, making it difficult for parents to fully understand the quality of school to which they are sending their child.
- GAO estimates that 13 percent of all private voucher schools provide student and school performance data on their websites.
- Only 4 of the 27 private school voucher and ESA programs in 2016–2017 provided information on the graduation rates of private schools.

Chapter 5: Legal Protections for Students with Disabilities in Voucher Programs

A. Concern with Waiver of Rights

Students with disabilities are guaranteed various rights through a network of federal laws. One of those statutes, IDEA, has guaranteed critical protections for more than four decades. In the past school year, it has served 6.5 million students and provided more than \$11 billion in federal funding to the nation's schools, making it the second-largest K–12 program in the U.S. Department of Education.¹⁵² Through the research and focus group participants, these potential harms for students with disabilities were noted:

1. In the majority of school voucher programs, when students use vouchers to attend a private school, they relinquish their rights under IDEA, including the right to an IEP, FAPE, and procedural protections.¹⁵³
2. State programs and private schools fail to notify parents of students with disabilities that they are waiving rights and what that means.
3. Some parents report feeling unprepared to make an informed decision.
4. Other parents report knowingly waiving their rights and were not worried about doing so.

The 2017 GAO report found that private school choice programs inconsistently provide

information on changes in rights and protections under IDEA when parents move a child with a disability from public to private school. In the 2016–2017 school year, 83 percent of students enrolled in a private school choice program specifically designed for students with disabilities were enrolled in a program that either provided no information or inaccurate information about the changes in their IDEA rights.

In the following sections, we discuss the interaction of school choice programs with constitutional, federal, and state rights.

B. The Federal Establishment Clause of the U.S. Constitution

Although some school voucher programs have been challenged for violating the Establishment Clause of the U.S. Constitution, the Supreme Court in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002)¹⁵⁴ held that Ohio's school voucher program did not violate the First Amendment's establishment of religion clause, despite the large number of students attending religious schools with school vouchers. The Court reasoned that the program did not violate the Establishment Clause because the program (1) was enacted for the valid secular purpose of providing educational assistance to poor children in a demonstrably failing public school system, and (2) was a

program of true private choice that did not have the effect of advancing religion.

C. The Fourteenth Amendment of the U.S. Constitution

Brumfield v. Dodd is a 1975 case in Louisiana that challenged the state Board of Education's provision of books and other materials to racially segregated private schools under the Constitution's Equal Protection Clause of the Fourteenth Amendment. The order issued in that case had no expiration, and currently the federal government is using that order to look into the state's new school voucher program.¹⁵⁵ In 2013, the judge concluded that the federal government was authorized to review the possible racial segregation of the state's voucher system, not only because of the possibility of segregated private schools, but also because the case implicates the state's obligation not to promote segregation in public schools. "This case is about the Constitution and *Brown v. Board of Education*," the judge said, referring to the U.S. Supreme Court's landmark 1954 decision outlawing "separate but equal" public schools. "The court has an obligation . . . to take reasonable steps in the process whereby the voucher program is not being used to promote segregation."¹⁵⁶

D. Federal Legal Requirements Under Voucher Programs

Title I, Part A, of the Elementary and Secondary Education Act (ESEA) mandates that all public school students shall be provided with a rigorous curriculum aligned to state-adopted standards for college- and career-readiness; and that the academic achievement standards include the same knowledge, skills, and levels

of achievement expected of all public school students in the state, with the sole exception of those students who are identified with the most significant cognitive disabilities.¹⁵⁷ These academic standards do not apply to the vast majority of students with disabilities in voucher programs.¹⁵⁸ Title I also requires each state to establish an accountability system that includes ambitious state-designed long-term goals. Regular measurements of interim progress toward meeting such goals are to be made for all students and separately for each subgroup of students in the state for improved academic achievement, as measured by proficiency on the annual assessments and high school graduation rates.

Students with disabilities are guaranteed various rights through a collection of federal laws, including IDEA, Section 504 of the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA).

E. School Vouchers and the Individuals with Disabilities Education Act

IDEA, enacted in 1973, provides federal funding to states for the purpose of assisting them to provide special education and related services to students with certain disabilities.¹⁵⁹ Generally, the funding formula is based on the number of children with disabilities in the state who are receiving special education and related services.¹⁶⁰ The states are required to distribute that funding to local educational agencies.¹⁶¹ The states are eligible for IDEA funding only if they agree to submit a plan for providing FAPE for students with disabilities in the least restrictive environment through an IEP, and to apply IDEA procedural safeguards.¹⁶²

IDEA arose from court decisions evaluating the constitutional obligations of public schools to serve students with disabilities.¹⁶³ Congress incorporated these constitutional requirements into IDEA and provided federal funding to support implementation by the states. Under IDEA, schools must provide each eligible student with a FAPE that meets the standards of the SEA and is consistent with the student's IEP.¹⁶⁴ The right to FAPE ensures these students full and meaningful opportunities to participate in the same curriculum that is being taught to students without disabilities and to meet the same high academic standards that are set for all students.¹⁶⁵ Multiple provisions, including

those regarding IEP development and implementation, ensure that each student shall be involved and make progress in the general education curriculum—that is, the same curriculum as that provided to students without disabilities.¹⁶⁶ Moreover, consistent with IDEA's LRE requirement, students with disabilities are to be educated to the maximum extent appropriate with students without disabilities; removal from the regular education environment is to occur "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."¹⁶⁷

IEP teams must determine each student's LRE based on the student's unique disability-related needs as set forth in her IEP, not based on a diagnosis, a specific disability

label, or because the student requires needed modifications in the general education curriculum.¹⁶⁸ Such placement decisions cannot be based on the availability of placement options, administrative convenience, institutional barriers to providing supportive, related services in charter school settings, or based on the nature of students' particular disabilities rather than their individual needs.

IDEA has guaranteed critical protections to students with disabilities for more than four decades. In the 2016–2017 school year, it served 6.5 million students and provided more than \$11 billion in funding to the nation's schools, making it the second-largest K–12 program in

the U.S. Department of Education.¹⁶⁹ As the current Administration and Education Secretary Betsy DeVos push for expansion of voucher programs, risks for students with disabilities are often left out of

NCD research showed that state programs and private schools often fail to notify parents of students with disabilities about their rights and about how those rights may be forfeited in voucher programs.

pro-voucher narratives.¹⁷⁰ Parents of students with disabilities have mixed understandings and opinions about any possible loss of special education rights for themselves or their children. In focus groups and interviews, NCD research showed that state programs and private schools often fail to notify parents of students with disabilities about their rights and about how those rights may be forfeited in voucher programs; other parents received information but still felt unprepared to make a fully informed decision. Other parents felt the voucher programs were worth any risks and knowingly gave up special education rights without concerns about it. The fact is, however, that

for the majority of school voucher programs, if students attend a private school with the vouchers, they must relinquish their rights under IDEA,¹⁷¹ including the right to assessments paid by the school district, an IEP, FAPE, LRE, and procedural due process protections for them and their families.¹⁷² When a voucher is used for a school that does not provide sufficient services, parents have no recourse. If a private school fails to meet a student's needs, the student will not be entitled to compensatory services. Private schools do not have to follow the IEP and are able to easily remove the student from the program. COPAA members indicate that in order to accept a voucher, there can be no outstanding complaint by the family against the district, making it impossible to pursue any sort of compensatory remedy for past, present, or future claims. Denying IDEA protections in the name of choice is potentially a way for states to skirt accountability for individual access to a free and appropriate public education. Under a voucher, disability-related services may or may not be free (as many parents have to cover the cost with personal funds), and the education may or may not be appropriate for the particular student. In sum, as a general rule, IDEA rights have not been viewed as extended to children and youth with disabilities who participate in voucher programs. Some states, however, have chosen either to

align with IDEA or to protect certain rights under IDEA.

In addition, as stated previously, the GAO found that when parents move a child with a disability from public to private school, school choice programs inconsistently provide information on changes in rights and protections under IDEA. In the 2016–2017 academic year, 83 percent of students enrolled using vouchers

specifically designed for students with disabilities received no information or inaccurate information about the changes in their IDEA rights when they chose a private school. Families should have easy-to-understand, accurate information in a format that is accessible to people with disabilities and presented in the family's primary language. As explained later, this information must also explain the risks of waiving rights and how it may affect services.

Whether or not the state requires parents and students to explicitly relinquish rights under

IDEA as a condition of accepting a voucher varies considerably. Nevada voucher law is silent. Arizona doesn't specifically state that rights are terminated, but it does say that the state department will not monitor schools to ensure that procedural or substantive rights are upheld. Parents in Arizona who feel rights are being violated have to file a complaint with the U.S. Office for Civil Rights (OCR). In Florida, when parents opt to apply for the McKay Scholarship

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Families should have easy-to-understand, accurate information in a format that is accessible to people with disabilities and presented in the family's primary language.

specifically for a child with a disability, their child's rights under IDEA are then explicitly revoked. Laws in Georgia and Oklahoma also explicitly revoke IDEA rights. Louisiana requires that the student's IEP be followed, and in Ohio parents and students retain all rights except the right to due process for denial of FAPE. Florida and Mississippi programs require that families waive all IDEA rights, while other states, such as Utah and Ohio, allow parents to retain limited rights. In Ohio, the guidelines state that the district will no longer be responsible for FAPE; while a child is receiving a scholarship, the participating school is required to maintain an IEP for the student, and all records and documentation relating to the IEP and progress must also be provided to the public school district, as is also the case in Utah. Any school wishing to provide services under the scholarship program must sign an affidavit also stating that they will comply with laws regarding the delivery of services to children with disabilities.

A 1990 OCR staff memorandum states that students who are placed in private schools through the Milwaukee Choice Program are considered to be parentally placed in private schools and are not covered by IDEA's protections.¹⁷² A 2001 OCR letter, *Letter to Bowen*, reiterated this point, stating that participating students in Florida's McKay Program "are considered 'private school children with disabilities' enrolled by their parents. . . . [S]uch parentally placed private school students with disabilities have no individual entitlement to a free appropriate public education including special education and related services in connection with those placements."^{173, 175}

Many states, including the District of Columbia, despite having language in its statute

that says "(c) CHILDREN WITH DISABILITIES.— Nothing in this Act may be construed to alter or modify the provisions of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.),"¹⁷⁶ require parents to waive their rights to IDEA protections.

Weber (2007) asserts that under the current IDEA, there is not an explicitly established individual entitlement to special education services for any private school child. Nor does it require that services provided to private school children be delivered on the site of the private schools or by means of private school personnel. IDEA affords few procedural rights to parents of private school children to challenge decisions about services.¹⁷⁷ Weber's premise is tied to IDEA provisions (changed in 2004) relating to services for children placed voluntarily by their parents in private schools. The Department of Education's 2011 guidance supports Weber's view:¹⁷⁸

The LEA's obligations to parentally placed private school children with disabilities are different from its responsibilities to those enrolled in public schools or to children with disabilities placed in a private school by a public agency (rather than by parents) as a means of providing FAPE. Parentally placed children with disabilities do not have an individual entitlement to services they would receive if they were enrolled in a public school. Instead, the LEA is required to spend a proportionate amount of IDEA federal funds to provide equitable services to this group of children. Therefore, it is possible that some parentally placed children with disabilities will not receive any services while others will.¹⁷⁹

The Department of Education's guidance/publication, released in 2011, reminds local education agencies with jurisdiction over the school district where the private school is located that they remain the responsible agency for implementing IDEA's "child find" provision: "the obligation that the LEA locate, identify, evaluate, and spend a proportionate share of IDEA funds for equitable services for children with disabilities enrolled by their parents in private, including religious, elementary and secondary schools located in that district."¹⁰⁰

IDEA itself does not provide for FAPE and LRE in private schools, even if those schools receive funding from the state. Rather, under IDEA, a state must provide for the equitable participation of children who are parentally placed in private schools, as a group, by allocating a "proportionate amount" of federal IDEA funding to the group.¹⁰¹ The state is then responsible for ensuring that parentally placed students in private schools have opportunities for equitable participation in special education and related services within that proportional amount.¹⁰² The equitable services must be provided by the state, either directly or through contracts.¹⁰³ However, IDEA "does not require a [LEA] to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a [FAPE] available to the child and the parents elected to place the child in such private school or facility."¹⁰⁴ Thus, as shown by the U.S. Supreme Court in *Zobrest v. Catalina Foothills School District*,¹⁰⁵ *Board of Education of Kiryas Joel v. Grumet*,¹⁰⁶

and *Agostini v. Felton*,¹⁰⁷ the district does have an IDEA mandate to provide limited services to students enrolled in private schools. However, they are not required to provide the same level of special education services the child would receive if enrolled in a public school. As noted earlier, under Child Find requirements, the district is required to assess all students within the district, even those homeschooled or in private school settings. There are limitations on the other services: (1) these services must be only supplemental services, not the student's primary services for education; (2) the amount provided is limited to a small proportion of the federal IDEA funds provided to the district, and when those funds are expended, the district is not required to spend more; (3) the district may choose to not serve all parentally placed students; (4) the full range of special education services may not be available; and (5) the provisions of FAPE are not available.¹⁰⁸

Notably, this does not make the private school responsible for providing special education and related services, but the responsibility remains with the state, which may decide "how, where, and by whom special education and related services will be provided."¹⁰⁹ Nor does it provide an individual right to any particular parentally placed child to receive FAPE.¹⁰⁰ As explained by the Department of Education, "Therefore, it is possible that some parentally placed children with disabilities will not receive any services while others will. For those who receive services, the amount and type of services also may differ from the services the child would receive if placed in a public school by the parents or in a

IDEA itself does not provide for FAPE and LRE in private schools, even if those schools receive funding from the state.

private school by a public agency.”¹⁰³ An individual parentally placed child with a disability who is designated by the state or LEA to receive special education and related services must have a services plan, which shares some parent participation considerations similar to the IEP process.¹⁰² Special education and related services may be provided at the private school or at an alternate site.¹⁰³ Private schools, rather than parents, have the right to complain about a failure of the state to give due consideration to the views of the private school in determining how to allocate the proportionate amount of funding for parentally placed students.¹⁰⁴

For a student eligible under IDEA and under the parentally placed provision, acceptance of a voucher is a withdrawal and a relinquishment of individual rights under IDEA, including special education and related services. Vouchers, however, represent a school choice initiative that authorizes use of government resources to allow parents to send their child to a school other than the one to which the child would be assigned in the family's home community. Often, the reason for the voucher is the acknowledged failure of the public school to adequately provide an education.

When a school district offers a school placement that cannot implement the required instruction and services at the time that the parents have to decide whether to accept or reject the school placement offer, in this case at the IEP meeting, courts have found that the school district failed to offer the child a FAPE.^{105, 106}

Denying rights under IDEA as a condition of accepting a scholarship counters both the theoretical purpose of vouchers and IDEA's stated intent, for both vouchers and IDEA assert that their purpose is to ensure that the student's specific individualized needs are met in a placement that will best serve the educational needs of the child. IDEA promises meaningful parent participation, as do vouchers, but vouchers in theory go a step further in enabling families to make independent private choices to direct their resources to appropriate schools. This promise of “choice” is hollow, however, for many families who cannot afford the cost above the allowable voucher funds, cannot provide transportation, or may have to give up all procedural safeguards and rights to benefit from the voucher.

[Federal IDEA rights, as a general rule, have not been viewed as being extended to children and youth with disabilities who participate in voucher programs.]

In sum, federal IDEA rights, as a general rule, have not been viewed as being extended to children and youth with disabilities who participate in voucher programs. All the same, states continue to receive special education funding for voucher students and have the ability to require voucher schools to carry out IDEA obligations through contract or as a condition of receiving voucher funding.

The express purpose of IDEA is to “ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs.”¹⁰⁷ Under IDEA, in exchange for receipt of federal funds, the state agrees to guarantee a FAPE to every child who has a disability.¹⁰⁸ A FAPE is provided to a child with disabilities through the development of an IEP,

which is both a “comprehensive statement of the educational needs of a handicapped [sic] child and the specially designed instruction and related services to be employed to meet those needs.”¹⁹⁹ An IEP must be reasonably calculated to enable the child to receive educational benefits.²⁰⁰ The IEP is required to identify both the services and a particular school at which the offered instruction and services are to be implemented.²⁰¹ An IEP that fails to offer a school, “as a matter of law . . . [is] not reasonably calculated to enable [the child] to receive educational benefits.”²⁰²

Some scholars suggest that state and federal laws should consider tying IDEA rights to the role of the IEP team in making the placement decision. If the IEP team together, including the parents, makes the placement choice of a voucher school, not the parents alone, and if the team chooses the private school as a means to provide FAPE, the public school district should retain the primary responsibility to provide FAPE and stay in a working relationship with the private school. In addition, the child should retain all IDEA rights, and all substantive requirements (such as development of an IEP) must be followed.²⁰³

Any allowable choice in this context must only require that the parents and the school agree that the voucher will allow school funds to follow the child to the school of his or her choice. Parents or students should not have to give up either procedural or substantive requirements under IDEA, or their right to an impartial due process hearing if the private school fails to comply. The IEP should remain the cornerstone of providing individualized special education and related services designed to meet the unique needs of students with disabilities.

Although the loss of meaningful protection under IDEA is problematic for parents accepting vouchers, the consequences of such waivers are limited to the extent that § 504 or the ADA provides similar protection to students with disabilities, either through direct regulation of the private schools or through regulation of the state agencies administering voucher programs. Upon closer examination, however, it becomes evident that the protection these statutes extend to private school students is relatively minimal.²⁰⁴

F. Section 504

Under Section 504 of the Rehabilitation Act of 1973, any federal funding to a SEA or LEA triggers antidiscrimination requirements for their educational programs. For public schools receiving federal funds from the Department of Education (DOE), these requirements include the provision of an appropriate education, including regular and special education and related aids and services that (1) are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met and (2) are based upon adherence to regulatory procedures (34 C.F.R. § 104.31 et seq.). In addition, both public and private schools receiving federal funding must meet nondiscrimination requirements. For example, they are prohibited from excluding or limiting the participation of students with disabilities and from segregating students with disabilities. They are also required to provide physical accessibility (program access for existing facilities and complete access for new facilities or alterations); reasonable modifications to policies, practices, and procedures when necessary to

allow a student with a disability to participate; and auxiliary aids and services to ensure effective communication with students with disabilities (34 C.F.R. § 104.4).

The Section 504 requirements apply to all stakeholders, including parents, companions, and students with disabilities. Section 504's nondiscrimination requirements, unlike IDEA's FAPE, are subject to the defense that providing a reasonable modification or effective communication would cause an undue burden or fundamental alteration to the program.²⁰⁵ However, these limitations on the obligations

still require a good deal from school districts

because, as the Department of Education has explained, "[An undue burden] defense would rarely, if ever, prevail in the context of extracurricular athletics. . . . Moreover, whenever IDEA would impose a duty

to provide aids and services needed for participation in extracurricular athletics . . . , OCR would likewise rarely, if ever, find that providing the same needed aids and services for extracurricular athletics constitutes a fundamental alteration under Section 504 for students not eligible under IDEA."²⁰⁶

The *Letter to Bowen* stated that because a Florida SEA received federal financial assistance, Section 504 applied to SEA's administration of the program. "The SEA must ensure that participating private schools do not exclude a Scholarship Program student with a disability

'if the person can, with minor adjustments, be provided an appropriate education within the school's program. . . . However, the SEA would not be required to ensure that the participating private schools 'provide an appropriate education to . . . students [with disabilities] with special educational needs if [the participating private schools do] not offer programs designed to meet those needs."

IDEA contains a statutory FAPE provision and allows private causes of action only for prospective relief and only after administrative proceedings have been exhausted. Section

504 contains a broadly worded prohibition on discrimination, exclusion, and denial of benefits, under which the U.S. DOE has promulgated regulations containing a FAPE requirement for public schools that is worded somewhat differently from IDEA's FAPE requirement.

Section 504 can be privately enforced in federal court to provide, in addition to prospective relief, compensatory but not punitive damages for past violations.²⁰⁷

FAPE under Section 504 is defined to require a comparison between the manner in which the needs of children with and without disabilities are met and focuses on the "design" of a child's educational program.²⁰⁸ FAPE requires education and services "designed to meet individual educational needs of handicapped [sic] persons *as adequately as* the needs of non-handicapped persons are met" (emphasis added).²⁰⁹

Section 504's nondiscrimination requirements, unlike IDEA's FAPE, are subject to the defense that providing a reasonable modification or effective communication would cause an undue burden or fundamental alteration to the program.

State or local education agencies that receive federal funding, as well as private schools that receive federal funding, either directly or indirectly, are covered by Section 504. Thus, if private schools receive federal funding from SEAs or LEAs, they are obligated to comply with Section 504. In addition, if SEAs or LEAs contract with private schools to operate schools, the Section 504 obligations will flow to the private schools.

However, because voucher and ESA funding is provided to parents, who are arguably the end beneficiaries of the funding, rather than directly to private schools, this could break the chain of federal funding, and thus the chain of Section 504 obligations, before it reaches the private schools. Because the framework of Section 504 is based on the framework of Title VI of the Civil Rights Act of 1964, the Department of Justice's Title VI Manual is instructive, as is case law under Title IX, which uses the same framework:

Finally, Title VI does not apply to direct, unconditional assistance to ultimate beneficiaries, the intended class of private citizens receiving federal aid. For example, social security payments and veterans' pensions are not federal financial assistance. . . . During debate preceding passage of the Civil Rights Act, members of Congress responded to concerns about the scope of Title VI by explaining that Title VI would not apply to direct benefit programs: "The title does not provide for action

against individuals receiving funds under federally assisted programs—for example, widows, children of veterans, homeowners, farmers, or elderly persons living on social security benefits."²¹⁰

Cases in the higher education context indicate that Section 504 obligations will attach to voucher funding and will bind private schools receiving tuition through vouchers, if the voucher funding to the parent is conditioned on the student participating in an educational program. Thus, in *Grove City College v. Bell*, the Supreme Court found that the college, which did not receive any direct federal funding, nevertheless was subject

to Title IX of the Civil Rights Act by virtue of its students' receipt of federal financial aid.²¹¹ The Court explained, "The linchpin of Grove City's argument that none of its programs receives any federal assistance

is a perceived distinction between direct and indirect aid, a distinction that finds no support in the text of [Title IX]. Nothing in [Title IX] suggests that Congress elevated form over substance by making application of the nondiscrimination principle dependent on the manner in which a program or activity receives federal assistance. There is no basis in the statute for the view that only institutions that themselves apply for federal aid or receive checks directly from the federal government are subject to regulation. . . . [B]y its all inclusive terminology [Title IX] appears to encompass *all* forms of federal aid to education, direct or indirect."²¹² In distinguishing between recipients and beneficiaries, the courts have

State or local education agencies that receive federal funding, as well as private schools that receive federal funding, either directly or indirectly, are covered by Section 504.

considered both the intent of Congress and a party's ability to accept or reject the federal financial assistance.²¹³

Importantly, however, tax credits, such as those sometimes used to provide voucher funding to parents, are not necessarily considered to be federal financial assistance.²¹⁴ While some federal laws, such as the Affordable Care Act, explicitly provide that tax credits are considered federal financial assistance,²¹⁵ others are silent on the subject. As the U.S. Treasury²¹⁶ has noted, "While tax credits are generally not considered FFA, we recognize that, as the commenters have pointed out, some aspects of LIHTCs [low income housing tax credits] resemble programs that constitute FFA [federal financial assistance]. Though we are not including LIHTCs in the Appendix, we emphasize that the Appendix does not purport to be exhaustive, and the absence of a program or activity from the list does not by such absence limit the applicability of Title VI to that program or activity."

Even if Section 504 coverage applies to private schools funded through vouchers, the extent of the Section 504 obligations applicable to private schools may differ from those applicable to public schools. In the current public school system, in determining whether a particular educational or related service, reasonable modification, or auxiliary aid is reasonable or an undue burden, the cost of the accommodation is compared to the entire SEA or LEA budget. When a particular private school is responsible for providing the accommodation, that school's individual budget, which is presumably smaller than the

SEA or LEA budget, will determine whether the cost is an undue burden. In addition, the Department of Education regulation governing private schools that are covered by Section 504 provides that such schools are not allowed to exclude students with disabilities "if the person can, with minor adjustments, be provided an appropriate education" and "may not charge more for the provision of appropriate education to . . . persons [with disabilities] than to persons [without disabilities] except to the extent that any additional charge is justified by a substantial increase in cost to the recipient."²¹⁷ This may limit voucher schools' obligations to serve students who need high-cost accommodations and may

allow them to increase tuition for such students.

If private schools that receive vouchers discriminate on the basis of disability, states, SEAs, and LEAs that provide those vouchers could be held liable under Section 504.

In a voucher system, the SEA and LEA still retain the Section 504 obligations attached to the federal funding they receive. As a

result, they may be obligated to ensure that the private schools funded through vouchers provide equal opportunity and appropriate education to students with disabilities, even if the private schools themselves have different obligations based on their own budgets. In addition, Department of Education Section 504 regulations preclude states from "providing significant assistance to an agency . . . that discriminates on the basis of handicap [sic] in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity."²¹⁸ If private schools that receive vouchers discriminate on the basis of disability, states, SEAs, and LEAs that provide those vouchers could be held liable under Section 504 (see Figure 1).

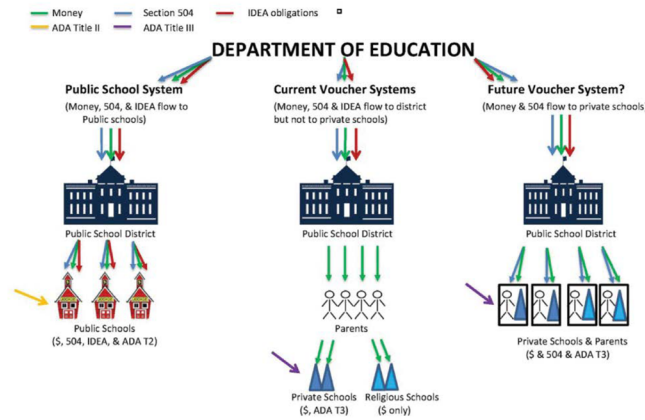


Figure 1: Funding Flow

G. The Americans with Disabilities Act

Under Title II of the Americans with Disabilities Education Act (ADA), state and local government agencies, including SEAs, LEAs, and public schools, are prohibited from discrimination against students and other participants with disabilities. They may not exclude or limit the participation of students with disabilities; must not segregate students with disabilities; must provide physical accessibility (program access for existing facilities and complete access for new facilities or alterations); must provide reasonable modifications to policies, practices, and procedures when necessary to allow a student with a disability to participate;

and must provide auxiliary aids and services to ensure equally effective communication with students with disabilities.²¹⁹ The requirements of ADA's Title II, unlike the FAPE requirements of IDEA, are subject to the defense that providing a reasonable modification or effective communication would cause an undue burden or fundamental alteration to the program in light of the SEAs, LEAs, and school's entire available budget.²²⁰ Title II can be enforced privately through lawsuits or through complaints to the federal Department of Education (DOE) or Department of Justice (DOJ); remedies include requiring accommodations and, in some circumstances, compensatory damages for past violations.

Private schools are not covered under Title II of the ADA, even if they receive state or local funding. Rather, they are covered under Title III of the ADA. All nonreligious private schools are covered as “public accommodations” under Title III of the ADA and as such, are precluded from discriminating on the basis of disability. Among other things, this prohibition requires private schools to make reasonable modifications to policies, practices, and procedures where such modifications are necessary for students with disabilities and do not represent a fundamental alteration of the academic program. Title III also precludes private schools from refusing to allow a qualified student with a disability to participate in their programs or from imposing unnecessary eligibility requirements that tend to screen out such students. To ensure inclusion, private schools must provide auxiliary aids and services where necessary to facilitate communication with students with disabilities, and architectural barriers must be removed where it is readily achievable to do so. The defense of undue burden, as applicable to a private school, will be determined based on the particular private school’s budget rather than the resources of the school district or state. Title III can be enforced by filing a private lawsuit or by filing a complaint with the DOJ. However, remedies for violation of Title III do not include damages for harm caused by a private school’s discrimination.

Private schools are not covered under Title II of the ADA, even if they receive state or local funding.

Title III of the ADA explicitly exempts religious organizations, including religious schools, from all its obligations.

In addition, Title III of the ADA explicitly exempts religious organizations, including religious schools, from all its obligations.²²¹ Therefore, private religious schools, regardless of their receipt of state funding, are not prohibited from discriminating on the basis of disability. The only federal law that could subject private religious schools to nondiscrimination requirements is Section 504, if the voucher is treated as federal financial assistance, as discussed earlier (see Figure 1).

States could require, as a condition of participation in a voucher program, that private schools agree to be bound by the obligations

of Title II of the ADA, judged according to the budget and resources of the SEA or LEA, rather than to the particular private school’s budget.

1. Interplay of ADA Title II and Title III in Voucher Programs

A 2013 letter from the U.S. Department of Justice (DOJ) to the Wisconsin Department of

Public Instruction (DPI) states that because the school choice program is funded and administered by the state, the program itself is subject to

Title II requirements of the ADA. “[T]he state cannot, by delegating the education function to private voucher schools, place MPCP [Milwaukee Parental Choice Program] students beyond the reach of federal laws that require Wisconsin to eliminate disability discrimination

in its administration of public programs.” DPI is required to collect accurate information about participating schools and ensure that services are provided in a manner that does not discriminate.²²² DOJ reasoned that government agencies are obligated under Title II to “take appropriate steps . . . to prohibit discrimination against individuals with disabilities, regardless of whether services are delivered directly by a public entity or provided through a third party.”

DOJ’s position in the letter walks a careful line between state and federal precedent holding that students are “parentally placed” when they participate in voucher programs, such that state and federal laws applicable to governmental entities do not apply to private voucher schools, and the obligations the state has to ensure that its voucher program, as a whole, does not discriminate. The DOJ stated:

Title II’s nondiscrimination requirements do not compel DPI to require that voucher schools affirmatively provide students with disabilities special education and related services pursuant to the Individuals with Disabilities Education Act (“IDEA”). See 20 U.S.C. §1400, et seq. However, a student with a disability who meets income requirements for the school choice program, and voluntarily foregoes IDEA services in order to attend a voucher school, is entitled to the same opportunity as her non-disabled peers to attend the voucher school of her choice and to meaningfully access the general education curriculum offered by that school.

The letter also explicitly states that Title II’s nondiscrimination requirements do not compel the DPI to provide students with special

education and related services pursuant to IDEA. However, a student with a disability who is eligible for a voucher and attends a private school with that voucher is entitled to the same opportunity as their peers without disabilities to attend the voucher school of their choice and meaningfully access the general education. The DOJ’s letter, in apparent recognition of the limitations on states’ power to force private voucher schools to accommodate students with disabilities, limited the state’s corrective obligations to

1. Ensure that its administration of the voucher program does not discriminate against students with disabilities.
2. Establish and publicize a procedure for individuals to complain to the state about disability discrimination in the school choice program.
3. Collect data about the number of students with disabilities who (a) are enrolled in voucher schools, (b) are denied admission to voucher schools, (c) leave voucher schools, or (d) are suspended or expelled from voucher schools.
4. Conduct outreach to families of students with disabilities about school choice programs and provide specific and accurate information about the rights of students with disabilities and services available at voucher schools.
5. Monitor voucher schools’ rejections of, discouragement of applications from, and expulsions of students with disabilities.
6. Provide ADA training and guidance for voucher schools.

In short, while the DOJ letter requires the state to oversee its voucher program in order to ensure that the program, as a whole, is available to students with disabilities, it does not apply the requirements of Title II to particular private voucher schools themselves. The DOJ closed its investigation of the Wisconsin voucher program in 2015 without finding a violation.

The possible limits on the ability of ADA Title II to hold states responsible for the private entities that receive vouchers are further illustrated by *Liberty Resources, Inc. v. Philadelphia Housing Authority*.²²³ That case involved a challenge under Title II and Section 504 to a housing voucher program providing vouchers to low-income families to subsidize rent payments to private landlords. The vouchers were funded in part by federal money, and the housing authority imposed some obligations on the private landlords who accepted the vouchers. However, the housing authority did not require landlords to make their facilities accessible. The federal court rejected the challenge, finding that the housing authority was only required to provide meaningful access to the voucher program. Therefore, as long as the housing authority was evenhanded

in its issuance of vouchers to people with and without disabilities, it complied with federal law and was not responsible for the actions of private entities.²²⁴

H. State Law

Most states prohibit disability discrimination by public schools under state law. Many states, including some of those with school choice programs, also have state laws prohibiting discrimination on the basis of disability by public accommodations, such as private schools.

Generally, these state public accommodation laws are interpreted to provide requirements similar to Title III of the ADA. Some states also have laws prohibiting discrimination by recipients of state funding, which could be helpful to states seeking to ensure that voucher schools meet each state's obligations to its students with disabilities. As noted in Section E, states could require, as a condition of participation in a voucher program, that private schools agree to be bound by the obligations of Title II of the ADA, judged according to the budget and resources of the SEA or LEA, rather than to the particular private school's budget.

Chapter 6: Court Challenges

The construct of vouchers in general, not specific to students with disabilities, is contentious and has been challenged in court at both federal and state levels. Some examples of challenges to school voucher programs include *Zelman v. Simmons-Harris* in which the Supreme Court held that Ohio's school voucher program did not violate the First Amendment's establishment of religion clause, despite the large number of students attending religious schools with school vouchers.²²⁵ The recent Supreme Court case, *Trinity Lutheran Church of Columbia v. Comer*,²²⁶ may add to the debate on the use of public funds for religious private schools. The Court determined that the First Amendment did not bar a church an otherwise public benefit because of its religious status. The ruling was a narrow one: viewing eligibility to participate in Missouri's playground program as akin to eligibility for generally available public services such as police and fire protection.

In 2012, school districts in Oklahoma sued to prevent the voucher legislation that served students with disabilities under IDEA but excluded students with disabilities with accommodation plans developed under Section 504 of the Rehabilitation Act of 1973. On March 27, 2012, a Tulsa district court agreed with the school districts and struck down the Lindsey

Nicole Henry Scholarships for Students with Disabilities Program as unconstitutional. The Oklahoma Supreme Court, on February 16, 2016, upheld the constitutionality of the Lindsey Nicole Henry Scholarships for Students with Disabilities Program stating: "Because the parent receives and directs the funds to the private school, sectarian or non-sectarian, we are satisfied that the state is not actively involved in the adoption of sectarian principles or directing monetary support to a sectarian institution."

When Nevada adopted a school voucher program, there were challenges based on the state constitution.²²⁷ The American Civil Liberties Union (ACLU) challenged the Nevada voucher program on constitutional grounds, arguing in a lawsuit filed on August 27, 2015, that the program violates the state's prohibition against using public money for religious purposes.²²⁸ The Nevada program creates "educational savings accounts" that would allow any parent, regardless of income, to pull a child from the state's public schools and take tax dollars with them to pay for private or parochial school. Other states increasingly have allowed tax dollars to be used for private school tuition, but most limit the programs to students with disabilities or from low-income families. Nevada's law is unique because all of the state's 450,000 K–12 public school children are eligible to take the money to

whatever school they choose. In January 2016, Judge James Wilson of the First Judicial District Court of Nevada (Carson City) ruled in *Lopez v. Schwartz* that the state's school voucher law (SB 302) enacted in 2015 by the legislature violates two provisions of Nevada's constitution. Judge Wilson issued a preliminary injunction to prevent the state from implementing the law. The case challenging the voucher law was filed by parents of Nevada public school children from across the state. They argued that the program would divert scarce funding from public schools, triggering cuts to essential programs and services for their children and all other children attending Nevada's public schools.²²⁹ In September 2016, the court ruled that Nevada's ESA program was constitutional but required the creation of a new funding mechanism by the legislature.

Challenges to vouchers have also been made based on equal protection under the Fourteenth Amendment. In *Brumfield v. Dodd* (1975), families of black students successfully sued Louisiana's Board of Education and a handful of school boards for providing funding to private schools that discriminated against the black students on the basis of race. Finding a violation of Equal Protection Clause of the Fourteenth Amendment, the court ordered the state and local defendants to recoup the materials and funds. Ten years after the initial ruling, the court issued a Consent Decree, reiterating that "the [State] Department [of Education] will not provide any monies or assistance to any private school which the subject of any court order or injunction under which any local

school district or parish or any other entity is enjoined from providing assistance to the private school because of reasons related to racial discrimination."²³⁰

In 2013, a year after the Louisiana legislature implemented a voucher program, the DOJ sought to rely on the court's orders in *Brumfield*, which alleged that "most of the private schools participating in the [voucher] program have student enrollments that are all or almost all one race."²³¹ The DOJ moved to enjoin the state from awarding school vouchers to students attending school in districts operating under federal desegregation orders unless the state received authorization from the court. The Fifth Circuit Court of Appeals ruled that the DOJ did

not have the authority to regulate Louisiana's school voucher program and that the district court had no jurisdiction to let DOJ collect data and monitor the voucher

Challenges to vouchers have also been made based on equal protection under the Fourteenth Amendment.

program.²³²

Florida the Citizens for Strong Schools v. Florida State Board of Education was first filed in 2009 and amended in 2014. The suit alleged that Florida was violating its constitution by failing to provide a high-quality public education or adequate education funding. Plaintiffs are seeking a declaration that the state is in fact breaching its paramount constitutional duty to provide a high-quality, free public school system. They also hope to secure supplemental relief for K–12 public schools, beginning with a study to determine the actual cost of providing a high-quality education. The suit was amended in 2014 and added the challenge to the McKay Scholarship Program for Students with disabilities (alleging

that the state failed to administer a “uniform” system of education because two school choice programs—the Florida Tax Credit Scholarship Program and the John M. McKay Scholarship Program for Students with Disabilities or the McKay Scholarship Program—divert public funds to private schools that are not subject to the same requirements as public schools). The case

is pending before the Florida Supreme Court as of this writing.

As new programs are constructed, and if federal funds are used, creating “quasi-public” schools through use of voucher and voucher-like certificates (e.g., tax savings, tax-credit scholarships, or educational savings accounts), the legal challenges are likely to continue.²²³

Chapter 7: Preliminary Recommendations

A. Recommendations for Education Leaders and State Departments of Education

a. Maintaining IDEA Rights

- For vouchers for students with identified disabilities covered by IDEA, ensure that voucher amounts are based on the cost of individual special education and related service needs of the individual student, including transportation. This can be accomplished by setting voucher amounts for students with disabilities based on individual student needs or by allowing LEAs to provide and pay directly for special education and related services at voucher schools.
- Require private schools receiving increased vouchers to fully implement the child's IEP.
- Require private schools receiving increased vouchers to be subject to the administrative due process proceedings provided by the LEA.
- Ensure that parents who accept vouchers are fully informed of any changes to their IDEA, Section 504, ADA, or state law rights regarding students with disabilities and explicitly acknowledge acceptance of those changes.

b. Maintaining Nondiscrimination Rights

- Model vouchers on financial aid in higher education, by making vouchers payable to parents conditioned on the student participating in an approved educational program, thus making clear that federal funding is flowing to the private schools, along with its associated Section 504 obligations.
- Protect the legal rights of children and ensure that voucher programs do not result in liability for the state, by requiring, by contract or statute, that private schools receiving voucher programs implement the requirements of Section 504 and Title II of the ADA.

(continued)

A. Recommendations for Education Leaders and State Departments of Education, *continued*

- Provide oversight, data collection, monitoring, and reporting on participating private schools to ensure accountability for nondiscrimination, including disproportionate discipline, segregation, and academic equity, as well as administrative functions, financial viability, health and safety, academic assessment, and the provision of services.
- Collect and make publicly available data on students with disabilities accessing vouchers by disability, race, gender, and income; reasons for exiting public schools; type of placement (private, parochial, or school solely serving students with disabilities), and tenure in the placement.
- Conduct studies to evaluate the test scores, retention and graduation rates, harassment reports, and similar measures of success, both for students accepting vouchers and for those who remain in public schools.

c. Facilitating Academic Equity and Informed Choice

- Require private schools that accept vouchers to administer state assessments to students, including students with disabilities and publish data showing comparisons among private schools and public schools.
- Assess and publish information about the academic outcomes of each private school participating in a voucher program, including retention and graduation rates for students with disabilities.

B. Recommendations for Congress and/or Federal Agencies

a. Maintaining IDEA Rights

- The United States Department of Education (ED) should issue guidance to states making clear that use of vouchers does not mean that students are treated as parentally placed and no longer have the protections of IDEA.
- In the interim, ED should issue guidance to states and require that all parents should have notice that IDEA rights are waived and should be able to provide informed consent to that waiver.
- ED should issue guidance to states reminding them of their obligation to provide FAPE to all students with disabilities, including those using vouchers.
- ED should issue guidance to states clarifying that students using vouchers are entitled to pursue their IDEA rights through the state's established administrative due process proceedings.

b. Maintaining Nondiscrimination Rights

- Congress and ED should adopt legislation or regulations making clear that federal funding to schools that is distributed to parents via tax credits or vouchers for use in private schools, including religious schools, constitutes federal financial assistance for purposes of federal civil rights law, including Section 504's nondiscrimination and FAPE requirements.
- The U.S. Departments of Education and Justice should issue guidance or regulations to
 - Clarify that states and LEAs that implement voucher programs remain responsible for ensuring that students with disabilities participating in the program receive FAPE and equal access under Section 504 and the ADA and must provide appropriate oversight, data collection, enforcement, and resources to accomplish that responsibility.
 - Require that states not use an ESA program to educate students with disabilities unless it allows parents to keep their IDEA rights.
 - Require that states implement oversight, accountability, and monitoring to ensure that voucher programs do not result in loss of IDEA or nondiscrimination rights and do not result in segregation or disproportionate discipline, for students with disabilities, and implement remedial measures to address deficiencies.

Appendix A

Student Experiences

This appendix provides an in-depth examination of the differing experiences of two students with disabilities and their families as reported in the focus groups. Student A, Andy (not real name), utilizes an ESA, while Student B, Bonnie (not real name), uses a voucher program to attend a private school.

Andy

Andy is a 12-year-old with Down syndrome and intellectual disabilities. He receives a scholarship through the state's ESA program. Andy attended his home school prior to enrolling in the ESA. He attended that school for several years, and he seemed to fit in well and was well liked by other students. Many members of the school community know Andy because he's been at the same school since he was 3 years old.

Andy's public elementary school was inclusive and has an excellent rating—so much so that families that do not live in this school's area try to transfer their child if there are any openings. Andy's family was satisfied; they felt they were in a good school and were getting decent help for Andy. It did not start out that way, however. Andy's mom worked at building a relationship with school staff and administrators, and after the first IEP or two, she was able to get what she felt Andy needed because “they knew I would compromise on some things and other things I wouldn't.” The school was a good fit for the family.

And then life changed unexpectedly, and so the family was trying to find its footing; finances had to change, as did caregiving. Andy's mom was offered a position that was financially lucrative, but it would require travel. At this point, she heard about ESAs and decided to apply for one. Andy was approved and has used the program for three years; the family feels that it is a fantastic aid. Andy's mom indicated that the application process was easy, and once proof of residency and diagnosis were provided, Andy was approved. The family now homeschools Andy and states that they are able to “just do what we think [our] son needs and have the ability to get reimbursed for it, or sometimes direct pay for it through providers.” Andy's family reports that they feel participating in the ESA program has eliminated 95 percent of the stress involved in educating a child with a disability.

Andy's mom was nervous at first but then as she gained confidence, she realized she and her husband knew as much as anyone else did, and likely more, about their son. She started researching the learning curriculum and modalities and felt that by combining the main points of the curriculum with life experiences she could catch those teachable moments. Andy's parents, in collaboration with tutors and other service providers, learned that this arrangement worked in some circumstances and settings, but not in others. They felt that the program's flexibility empowered them to make what would correlate to an IEP that was, for perhaps the first time, genuinely individualized.

Andy's family reports that he is learning much more than they expected, though perhaps as is the case with any learning disability, the learning does not occur in a linear fashion. For example, Andy does not necessarily learn his letters first and then make progress on reading. He works on each of those skills continuously and learning increases as he finds subjects of interest. For example, Andy's family had the flexibility of scheduling and control over the educational programming to make plans to see the recent solar eclipse. Andy was fascinated by the phenomenon and is now reading more about the subject and can talk endlessly about the moon, the sun, eclipse, and shadows. The family states that he is probably years ahead in science than in reading in many regards. What is important to them is that he is in fact learning about something that is of interest to him. Andy is an experiential learner, and his mom and tutor pick his curriculum, build in trips to museums, go to parks, and the like. Then the tutor relates his learning to those experiences. This methodology has really worked for Andy. He remembers interesting facts and articulates words about those experiences more clearly than he articulates anything else. In retrospect, the family feels that Andy was in a good public school that was trying to help him, but it was unable to individualize or catch those teachable moments for Andy that would make a difference in how he learns.

Andy is also now in a unique program at a local university part-time and remains homeschooled for the other part. His family is required to turn in forms once a year from a licensed teacher that reports he is learning and making adequate progress. The teacher and Andy's parents decide what is adequate. Andy's mom stressed that it is important for decision makers to realize the lifestyle and pressures of families of children with disabilities, especially medical, learning, and financial pressures. School choice is vital in trying to meet the needs of some families and students.

Bonnie

Bonnie's parents chose to use a state voucher program because they felt that the public school system was not keeping their child safe. Bonnie was 5 years old and in pre-K and was self-injurious. She would try to put her head through a wall and would often bang her head on the floor. Bonnie has complex disabilities. The family requested a paraprofessional to be assigned to Bonnie in the public school in order to keep her safe. But the district refused.

Bonnie's parents stated that it was sad to have to worry first and foremost for their child's safety; that there was certainly more that parents typically hope for in school; and that parents hope for engaging classrooms, individualized attention, achievement and learning, and also, quite frankly, love and affection. But the fact was that the public school was not giving their child the support she needed to be safe. As the parents stated, "we aren't even talking about education. Keeping her safe became the first priority." In the public school she would come home with bruises and lacerations. She would also bite and attack other children. So, the situation became one in which no one in the classroom was safe.

Bonnie's parents wanted to put her in a school that would address her disabilities and that would have a staff properly trained in the state-approved crisis management program. When they were in the public school, they became worried that even if the school were to approve a paraprofessional for Bonnie, the person would likely be paid minimum wage and not be trained or professional.

After much discussion and investigation, the parents decided to apply for the state's voucher program. Their daughter scored the maximum amount allowed and found that the LEA would not allow her to receive the maximum funding. The parents were shocked, feeling that the LEA had "no problem getting rid of a child but [didn't] want to give a child what they are[sic] entitled to receive." The LEA staffing specialist said that she had never given a score so high in almost 10 years and she didn't know how this was even possible. The parents were stunned, as their child had significant disabilities, exhibited serious self-injurious and aggressive behavior, and required constant supervision. The score was arrived at through a valid assessment by professionals. Bonnie's parents had to hire an advocate to appeal to the state, making note of the fact that many parents still have to hire an advocate to get past the barriers.

The state agreed with the parents and instructed the LEA to pay the maximum amount. The monetary amount was much less than the cost of a private school (which generally costs more than \$40,000), so the family was grateful that they were able to have assistance with tuition. Even though they have to pay tens of thousands of dollars per year to make up the difference, the parents are satisfied because without the funds from the state they wouldn't be able to put Bonnie in an environment that could keep her safe.

Once the voucher amount was settled, Bonnie's family felt fortunate to find a school that met her needs, even though the school is 35 miles from their home, which means that Bonnie's mom has to travel 70 miles each day. Bonnie also has two siblings, and all three go to different schools. Not surprisingly, her mom spends a great deal of time each day on transportation.

Bonnie's parents said that they know many families who, even if they get properly funded, have a great deal of trouble finding a school that will accept or keep their child. This reality makes them nervous because if something does not work out for Bonnie or if she is expelled from the school for behaviors or any other reason, they will have no other option in the near vicinity. They don't have the resources to pick up and move, and although they could refuse the voucher and go back to public school, that is not a viable option due to safety concerns.

The state in which Bonnie and her family lives offers other options: notably transferring to another public school with voucher funds, if the school will accept the student. They explored this option and were told that the public school would not accept Bonnie unless the family paid for a paraprofessional out of pocket. They then explored using their private health insurance to cover that cost but were told that they would have a co-pay of \$50 a day.

In the end, they chose the state voucher program and a private school. Bonnie's parents report that she is doing fine at the school, though they feel that some barriers and issues remain. The funding goes to the private school; however, it is not allocated to the student, nor does the school guarantee that Bonnie will get what she needs. For example, Bonnie is nonverbal and uses the Picture Exchange Communication System (PECS), a language program using squares with pictures. The parents reported that the school was using black-and-white pictures for items, which were hard to identify, because the school did not have a color printer. Bonnie's mom lamented: "that's unfair and they are getting all of this funding. They couldn't spend \$60 on a printer? I bought the classroom a printer. How is it that they have

a new playground, but there is no printer for the children? The principal could have chosen to use the money that way, but he did not until I pushed.”

In the public school Bonnie was receiving language therapy and physical therapy. The family had to give up those services for Bonnie to obtain the voucher. Nonetheless, the family still feels the voucher program is important and that it allows students to be served better in a place that will meet their priority needs.

Bonnie is now in a school just for students with disabilities. She isn’t tested using state tests because of the severity of her disabilities. The parents are satisfied with her placement, stating that she “is in a school where she is loved and kept safe. Is she flourishing academically? I don’t know. Is she [toilet] trained? No. She is 7 now, but that’s okay. She is not hurting herself and is learning and enjoying life.”

Appendix B

In the pages that follow, Appendix B provides an overview of voucher programs, targeted educational savings accounts and individual tax credits/deductions for students with disabilities by state.

Programs for Students with Disabilities

State	Program	Enrolled (2017– 2018)	Per-Pupil Funding	Eligibility	Testing	Statutory Language Regarding Rights
AR	Succeed Scholarship Program for Students with Disabilities Ark. Code Ann. §§ 6-18-1901 through 1908	151	Average \$6,713	Be accepted to eligible private school. Be in foster care or have an IEP. Additional pre-requisites.	Nationally recognized norm- referenced test	Statute is silent; however, to participate must sign a waiver that releases state and residential district from any liability to provide services to or educate child.
FL	John M. McKay Scholarships Program Fla. Stat. §§ 1002.39, 1002.421	30,378	Average \$7,287	Students with disabilities—who have IEPs or a 504 plan— enrolled for at least 1 year. The voucher amount is determined through a matrix formula based on the amount of services a child received in public school.	No testing mandates	Requires parents to opt out of all the due process rights and services to which their child is entitled under IDEA.
GA	Georgia Special Needs Scholarship O.C.G.A. §§ 20-2- 2110 through 20-2-2118	4,408	Average \$5,606	Have an IEP. Parent must have lived in state for a year.	Pre- and postassessment testing	Acceptance of scholarship shall have the same effect as a parental refusal to consent to services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400, et seq.

Programs for Students with Disabilities (continued)

State	Program	Enrolled (2017– 2018)	Per-Pupil Funding	Eligibility	Testing	Statutory Language Regarding Rights
IN	Indiana Choice Scholarship Program Ind. Code §§ 20-51-1 through 4	34,299	\$4,024	Students have an IEP and are from families that earn up to (but not exceeding) 200 percent of FRL.	State testing mandates	Nonpublic eligible school is not an agent of the state or federal government, and therefore it is not subject to the U.S. or State of Indiana Constitution, Declaration of Independence, Supreme Court Decisions, Executive Orders. State may not regulate in any way.
LA	School Choice Pilot Program for Certain Students with Exceptionalities La. Rev. Stat. § 17:4031	311	\$ 50% of state per pupil funding (average \$2,500)	Student has autism, developmental delay, mental disability, other health impairment, specific learning disability, TBI. Has an IEP or a district- provided service plan or a nonpublic school service plan.	No testing mandates	Silent on IDEA specifically, does say “In accordance with time lines as determined by the department, each eligible nonpublic school choosing to participate in the program shall inform the department of the types of student exceptionalities as defined in R.S. 17:1842 that the school is willing to serve. Each school may determine the number of eligible students it will accept in any year of program participation and may establish criteria for enrollment of students. Each school shall have discretion in enrolling eligible students for participation in the program and no school shall be required to accept any eligible student.”

(continued)

Programs for Students with Disabilities (continued)

State	Program	Enrolled (2017– 2018)	Per-Pupil Funding	Eligibility	Testing	Statutory Language Regarding Rights
MS	Equal Opportunity for Students with Special Needs Miss. Code Ann. §§ 37-181-1 through 21	153	Average \$6,500	Students must have had an IEP within the past 5 years.	No testing mandates	Cannot enroll student in a public school and must waive individual entitlement to a FAPE, including special education and related services.
MS	Mississippi Dyslexia Therapy Scholarship Miss. Code Ann. §§ 37-175-1 through 29	119	Average \$4,980	Students diagnosed with dyslexia, 1–12th grade.	No testing mandates	A parent or legal guardian who applies for a Mississippi Dyslexia Therapy Scholarship is exercising his or her parental option to place his or her child in a nonpublic school.
MS	Nate Rogers Scholarship Miss. Code Ann. §§ 37-175-1 through 29	1	Capped at \$5,358	K-6 and have a diagnosed impairment and attended speech-language therapy and intervention.	No testing mandates	A parent or legal guardian who applies for a Mississippi Speech-Language Therapy Scholarship is exercising his or her parental option to place his or her child in a nonpublic school. No liability shall arise on the part of the state based on the award or use of a Mississippi Speech-Language Therapy Scholarship.

Programs for Students with Disabilities (continued)

State	Program	Enrolled (2017– 2018)	Per-Pupil Funding	Eligibility	Testing	Statutory Language Regarding Rights
NC	Special Education Scholarship Grants N.C. Rev. Stat. §§ 115C-112.6–9	1,323	Average \$6,508 per year	Require an IEP; additional enrollment prerequisites.	National testing mandated	Treated as parentally placed. Scholarship reimbursements for costs. Scholarship reimbursement for costs incurred shall be provided as follows: a. Preapproval process. Prior to the start of each school semester, the parent of an eligible student may submit documentation of the special education, related services, or educational technology the parent anticipates incurring costs in that semester for preapproval by the Authority. Under specified conditions.
OH	Autism Scholarship Program Ohio Rev. Code §§ 3310.41 through 44	3,522	Average \$22,748	Autism spectrum disorder; registered and have a current IEP.	No testing mandates	Schools must comply with nondiscrimination codes. Entitled to transportation. Purpose of the scholarship is to attend a special education program that implements the child's IEP.

(continued)

Programs for Students with Disabilities (continued)

State	Program	Enrolled (2017– 2018)	Per-Pupil Funding	Eligibility	Testing	Statutory Language Regarding Rights
OH	Jon Peterson Special Needs Scholarship Program Ohio Rev. Code §§ 3310.51 through 64	3,470	Average \$9,818	Must be eligible for IDEA and have a completed, uncontested IEP in place. Limit—5% Students with Disabilities.	State testing mandates	Schools must comply with nondiscrimination laws. Unilaterally privately placed student not entitled to FAPE. Public school required to evaluate, implement the IEP annually review IEP and reevaluate. Parent entitled to IEE, mediation surrounding development, not implementation of IEP. ODE will investigate complaints about violation of scholarship rules, but not implementation of IEP or FAPE. Can file due process related to evaluation or identification, not whether received FAPE.
OK	Lindsey Nicole Henry Scholarships Okla. Stat. §§ 70-13-101.1 and 101.2	669	\$6,161	Any student with an IEP in effect. Additional enrollment prerequisites.	No testing mandates	Acceptance of a Lindsey Nicole Henry Scholarship shall have the same effect as a parental revocation of consent to service pursuant to 20 U.S.C. Sections 1414(a)(1)(D) and 1414(C) of the IDEA.

Programs for Students with Disabilities (continued)

State	Program	Enrolled (2017– 2018)	Per-Pupil Funding	Eligibility	Testing	Statutory Language Regarding Rights
UT	Carson Smith Special Needs Scholarship Program	882	\$5,905	Ages 3 and 21 identified IDEA or 504; and students with special needs in private schools that served students with disabilities prior to participating in the program.	Annual assessment and reporting	Comply with federal nondiscrimination requirements, disclose special education services to be provided and cost of those services.
WI	Special Needs Scholarship Program	246	\$12,129 per FTE	Participating students must have an active IEP. Students may continue participating in the program as long as they have an IEP and attend an eligible school until they turn 21 or graduate high school, whichever comes first.	Testing mandates State Civics Exam for high school graduation, unless IEP exempts student from participation	A choice school may not discriminate against a child with special needs. Only required to offer those services to assist students with special needs that it can provide with minor adjustments.
DC*	Opportunity Scholarships (Vouchers)	1,154	\$9,570	Not exclusively for, but does include, students with disabilities. Receive Supplemental Nutrition Assistance Program (SNAP) or earn no more than 185 percent of the federal poverty level.	State testing mandates	Includes, tuition, fees, and transportation Statute says: Nothing in this Act may be construed to alter or modify the provisions of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.). Treated as parentally placed.

Sources: GAO (2016) Report, Ed Choice and State Department of Education websites, state statutes.
 * Voucher program not limited to, but includes, students with disabilities.

Targeted Educational Savings Accounts

State	Program	#s (2017–2018)	Per Pupil	Eligibility	Testing	Statutory Language on Rights
AZ	Empowerment Scholarship Accounts Ariz. Rev. Stat. §§ 15-2401 through 2404	1,311	\$12,400	Attended public school for at least 100 days of prior year. Limited to students with special need. Other conditions apply.	Required to take state test or a nationally norm- referenced test	Statute is silent on IDEA; however, the contract requires parents to release public school from liability for education or providing services. Specifies school that accepts payment is not an agent of the state.
FL	Gardiner Scholarship Program Fla. Stat. §§ 383.063 & 1002.385	1,655	10,311	Have an IEP and have been diagnosed with one of the following: Autism, Down syndrome, intellectual disability, Prader-Willi syndrome, spina bifida, Williams syndrome, and kindergartners who are considered high risk.	Testing mandates— state and national; however, students with disabilities for whom testing is not appropriate are exempt.	Parents must sign an agreement to accept scholarship that the school is not responsible.
MS	Equal Opportunity for Students with Special Needs Program Miss. Code Ann. §§ 37-181-1 through 21	153	\$6637	Students must have had an IEP within the past five years.	No testing mandate— school provides parents the option of taking a standardized test.	Schools need to comply with nondiscrimination policies in 42 USC § 1981. Parents must agree student has no individual entitlement to a FAPE for as long as student is participating in the program.

State	Program	#s (2017-2018)	Per Pupil	Eligibility	Testing	Statutory Language on Rights
NC	Personal ESA	Will begin in 2018-2019 1,430 have enrolled	Max will be \$9,000	Child with a Disability: (c) Satisfies the disability determination requirements in Rule .0202. And meeting one of criteria: received scholarship previously, in NC school or DoD for at least 75 days, adopted, entering K or First Grade, Foster Care, Active Duty Military. Enrolled part-time in public school/ part-time in nonpublic school.	At least once a year, each eligible school shall administer a nationally standardized test, selected by the chief administrative officer of the eligible school, to all students in grades 3 and higher whose tuition and fees are paid in whole or in part by the program.	Parents do not have a right to receive all of the special education and related services that they would receive if enrolled in the public schools. Likewise, a private school does not have a legal obligation to provide special education and related services to students with disabilities.
TN	Individualized Education Account Program Tenn. Code Ann. §§ 49-10-1401 through 1406	87	\$6,721	Student K-12 with an IEP with specific disabilities. Other prerequisites apply.	Either state-approved or national testing	Parent must release LEA from all obligations to education of the student.

Individual Tax Credits/Deductions

State	Program	#s (2017-18)	Per Pupil	Eligibility	Details	Effect on Rights
AZ	Student Tuition Organization (STO) scholarships may be used by all students. Collectively, Arizona refers to these programs as "Switcher."	Do not have numbers for students with disabilities. 20,956 total	Average \$1,360	Original Program open to K-12 students attending one of AZTO's nine partner schools. The PLUS (Private Learning Uplifting Students) student attended an Arizona governmental primary or secondary school as a full-time student for at least 90 days of the prior fiscal year and transferred to a private school. Kindergarten student. Military dependent. Prior corporate tax credit recipient.	Statewide; no enrollment cap; state and national testing mandates	A credit is allowed against individual's taxes for the amount of voluntary cash contributions by the taxpayer or on the taxpayer's behalf during the taxable year to a school tuition organization that is certified pursuant to Chapter 16 of this title at the time of donation.
SC	Refundable Educational Credit for Exceptional Needs Children S.C. State Budget Proviso 109.115	N/A	Up to \$11,000 per student or actual cost of school	Parents are eligible if their child has been designated by the South Carolina Department of Education as meeting the federal definition of a "child with a disability" (34 CFR 300.8) diagnosed within past 3 years. Additionally, a student's parents must believe that the assigned public school district does not sufficiently meet the student's needs.	Statewide; no enrollment cap; state and national testing mandates	Funding sent directly to approved school through parents once confirm eligibility. Does not discriminate on the basis of race, color, or national origin; located in state that has an educational curriculum that includes courses set forth in the state's diploma requirements; graduation certificate requirements (for special needs children); school facilities are subject to applicable federal, state, and local laws.

Endnotes

- 1 *Brown v. Board of Education*, 347 U.S. 483 (1954).
- 2 *Endrew F., a Minor, by and Through His Parents and Next Friends, Joseph F. et al. v. Douglas County School District RE-1*, 580 U.S. ____ (2017).
- 3 National Center for Education Statistics. Retrieved on June 7, 2018, from https://nces.ed.gov/programs/coel/indicator_cgg.asp.
- 4 See Appendix B of this work.
- 5 Tommy Schultz, Krista Carney, Whitney Marcavage, Nicole Jackson, Elisa Clements, Paul Dauphin, and Kim Martinez. 2017. *School Choice Yearbook 2016–17* American Federation for Children Growth Fund.
- 6 Eric Westervelt. 2016. *Trump's Pick for Education: A Free Market Approach to School Choice*. National Public Radio. Retrieved on June 7, 2018, from <https://www.npr.org/sections/ed/2016/12/07/504696506/trumps-pick-for-education-a-free-market-approach-to-school-choice>.
- 7 Jeremy Hobson and Sam Abrams. 2017. *Why There Is a Renewed Push to Privatize Public Education*. Retrieved from <http://www.wbur.org/hereandnow/2017/05/09/privatize-public-education>, WBUR *Here and Now*.
- 8 Paul DiPerna, Michael Shaw, and Andrew D. Catt. 2017. Schooling in America. Public Opinion on K–12 Education, Parent Experiences, School Choice and the Role of the Federal Government, *EdChoice*.
- 9 National Council on Disability. 2003. *School Vouchers and Students with Disabilities*. Available at <https://ncd.gov/publications/2003/April152003>.
- 10 This number represents the overall number of voucher programs and does not indicate the voucher programs designed for students with disabilities.
- 11 GAO-18-94. 2017. *Federal Actions Needed to Ensure Parents Are Notified about Changes in Rights for Students with Disabilities*.
- 12 National Council on Disability. 2003.
- 13 Ibid.
- 14 Selene Almazan and Denise Stile Marshall. 2016. *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice Council of Parent Attorneys and Advocates*. Available at https://c.ymcdn.com/sites/copaa.site-ym.com/resource/resmgr/2016_Conference/COPAA_Voucher_paper_final_R6.pdf.
- 15 U.S. Department of Education, Office of Innovation and Improvement, Office of NonPublic Education. 2011. *The Individuals with Disabilities Education Act (IDEA): Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools*.
- 16 GAO-18-94. 2017.
- 17 See *Understanding the Program* found on <http://www.gadoe.org/External-Affairs-and-Policy/Policy/Pages/Special-Needs-Scholarship-Program-Resources.aspx>.
- 18 See https://www.tn.gov/content/dam/tn/education/iea/iea_Top_5_Things_to_Consider.pdf.
- 19 See <https://www.tn.gov/content/dam/tn/education/iea/iea-resources.html>.
- 20 President's Commission on Excellence in Special Education (PCESE). 2002. *A New Era: Revitalizing Special Education for Children and their Families*, p. 35.
- 21 20 U.S.C. §1412(a)(5).
- 22 PCESE. 2002.
- 23 COPAA. 2016: 17.
- 24 National Council on Disability. 2003: 6.

- 25 Candace Cortiella. 2006. "NCLB and IDEA: What Parents of Students with Disabilities Need to Know and Do." University of Minnesota, National Center on Educational Outcomes: 10. Retrieved from <https://nceo.umn.edu/docs/OnlinePubs/Parents.pdf>.
- 26 National Council on Disability. 2003: 28.
- 27 Focus Group and Interviewees participating in this study.
- 28 Wendy Hensel, "The Limits of Federal Disability Education Law: State Educational Voucher Programs," Georgia State University College of Law, Legal Studies Research Paper No. 2015-21, *Journal of Law and Education* 44(2015): 200.
- 29 National Council on Disability. 2003: 11.
- 30 Friedman Foundation for Educational Choice, *The ABCs of School Choice*, p. 5.
- 31 <https://www.congress.gov/bill/113th-congress/house-bill/647>
- 32 American Federation for Children. 2016–2017. *School Choice Yearbook* (Washington, DC, 2017).
- 33 Oscar Jimenez-Castellanos, William J. Mathis, and Kevin G. Welner. 2018. *The State of Education Savings Account Programs in the United States*. Boulder, CO: National Education Policy Center. Retrieved April 6, 2018, from <http://nepc.colorado.edu/publication/ESAs>.
- 34 American Federation for Children. 2016–2017. *School Choice Yearbook* (Washington, DC, 2017), p. 85.
- 35 EdChoice. <https://www.edchoice.org/school-choice/programs/mississippi-nate-rogers-scholarship-for-students-with-disabilities-program/>.
- 36 Emma Brown, "Colorado Supreme Court Strikes down School Voucher Program," *The Washington Post* (2015). Retrieved on June 7, 2018, from https://www.washingtonpost.com/local/education/colorado-supreme-court-strikes-down-school-voucher-program/2015/06/29/a382768e-1e75-11e5-bf41-c23f5d3face1_story.html?utm_term=.c35745835316/.
- 37 *Taxpayers for Pub. Educ. v. Douglas County Sch. Dist.*, 2017 Colo. LEXIS 959.
- 38 *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).
- 39 Alex DeWind. 2018. "School Voucher Program Case Dismissed by the Colorado Supreme Court." <http://castlerocknewspress.net/stories/school-voucher-program-case-dismissed-by-colorado-supreme-court,258008>.
- 40 Leslie Hiner. 2017. *A Frank Discussion of What Really Happened with Douglas County, Colorado's School Voucher Program*. Available at <https://www.edchoice.org/blog/frank-description-really-happened-douglas-county-colorados-school-voucher-program/>.
- 41 Ibid.
- 42 Douglas County School District Statement. Retrieved February 22, 2018, from <https://www.dcsdk12.org/legal-counsel/choice-scholarship-program>.
- 43 Christine Gulosino and Jonah Liebert. 2012. *NEPC Review: The Way of the Future: Education Savings Accounts for Every American Family*. Retrieved on March 29, 2018, from <http://nepc.colorado.edu/thinktank/review-ESA>.
- 44 T. Keung Hui. *NC Offers Debit Cards to Families of Disabled Students, but Some Worry about Fraud*. Retrieved on March 19, 2018, from <http://www.newsobserver.com/news/local/education/article197847574.html>.
- 45 The National Educational Policy Center. 2018.
- 46 Able Act of 2014. Retrieved on June 7, 2018, from <https://www.congress.gov/bill/113th-congress/house-bill/647>.
- 47 Megan Leonhardt. 2017. "Able Savings Accounts: An Updated, State-by-State List of Programs." Retrieved on June 7, 2018, from <http://time.com/money/4618317/529-able-savings-account-states>.
- 48 Dawn Doebler. 2017. *Column: 4 Changes Taxpayers Need to Know about the Tax Bill*. Retrieved on March 29, 2018, from <https://wtop.com/business-finance/2017/12/4-changes-tax-bill>.
- 49 Ron Lieber. 2017. "Yes, You Really Can Pay for Private School with 529 Plans Now." *New York Times*. Retrieved on March 29, 2018, from <https://www.nytimes.com/2017/12/21/your-money/529-plans-taxes-private-school.html>.
- 50 Ibid.

- 51 Andrew Ujifusa, "Ed Dept has no plans for a Federal Voucher Program. Let's Break That Down." Retrieved from http://blogs.edweek.org/edweek/campaign-k-12/2017/05/federal_voucher_program_no_plans_education_department.html.
- 52 Carol Burris. 2017. "Do Charters and Vouchers Hurt Public Schools? The Answer Is 'Yes.'" The Network for Public Education. Retrieved on June 7, 2018, from <https://networkforpubliceducation.org/2017/01/charters-vouchers-hurt-public-schools-answer-yes>.
- 53 National Center on Learning Disabilities. *Vouchers, Education Savings Accounts, and Tax Incentive Programs: Implications and Considerations for Students with Disabilities, (2017)*. Retrieved from <https://www.ncld.org/wp-content/uploads/2017/10/SV-ESA-TI-White-Paper.pdf>.
- 54 U.S. Census Bureau. 2013. *Public Education Finances: 2011, G11-ASPEF* (Washington, DC: Government Printing Office), p. 8, table 8. Retrieved from <http://www2.census.gov/govs/school/11f33pub.pdf>.
- 55 Robert M. Costrell. 2009. *Who Gains? Who Loses? The Fiscal Impact of the Milwaukee Parental Choice Program*. Retrieved from <http://educationnext.org/who-gains-who-loses>.
- 56 Cory Turner, Eric Weddle, and Peter Balonon-Rosen. 2017. *The Promise and Peril of School Vouchers*. Retrieved from <https://www.npr.org/sections/ed/2017/05/12/520111511/the-promise-and-peril-of-school-vouchers>.
- 57 Jeffery Dorfman. 2018. "Expanded 529 Accounts Improve Tax Equity and Increase School Choice." *Forbes Magazine*. Retrieved from <https://www.forbes.com/sites/jeffreydorfman/2018/01/16/expanded-529-accounts-improve-tax-equity-and-increase-school-choice/#5e3d9ef77f7f>.
- 58 Ibid.
- 59 Tim Walker. 2017. "School Vouchers' Empty Promise to Special Education Students," *NEA Today*. Retrieved from <http://neatoday.org/2012/05/23/school-vouchers-empty-promise-to-special-ed-students-2>.
- 60 "The Promise and Peril of School Vouchers." 2017. National Public Radio. Retrieved from <https://www.npr.org/sections/ed/2017/05/12/520111511/the-promise-and-peril-of-school-vouchers>.
- 61 The National Disability Rights Network (NDRN) is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and the Client Assistance Programs (CAP) for individuals with disabilities. P&As and CAPs work to improve the lives of people with disabilities by guarding against abuse; advocating for basic rights; and ensuring accountability in health care, education, employment, housing, transportation, and within the juvenile and criminal justice systems. See <http://www.ndrn.org/en/about.html>.
- 62 National Disability Rights Network. See <http://www.ndrn.org/en/media/releases/649-gao-school-choice-study.html>.
- 63 "Wisconsin Department of Public Instruction." Retrieved on June 7, 2018, from <https://dpi.wi.gov/sms/special-needs-scholarship/data>.
- 64 Jonathan N. Mills, Anna J. Egalite, and Patrick J. Wolf. 2016. "How Has Louisiana Scholarship Program Affected Students," p. 1. Retrieved from <https://educationresearchalliancenola.org/files/publications/ERA-Policy-Brief-Public-Private-School-Choice-160218.pdf>.
- 65 Andrew D. Catt and Evan Rhinesmith. 2017. "Why Indiana Parents Choose," EdChoice, p. 34.
- 66 Florida family interview.
- 67 Jill Ament. 2017. "Proposed Vouchers Wouldn't Reach Most Special Needs Students." Retrieved on June 7, 2018, from <http://kut.org/post/proposed-vouchers-wouldnt-reach-most-special-needs-students>.
- 68 Arizona Focus Group Parent.
- 69 Patricia Fontan. 2012. "An Analysis of the Legal Issues of School Voucher Programs for Students with Disabilities and Its Impact on the Individuals with Disabilities Education Act." Florida: University of Central Florida, p. 30. Retrieved on June 7, 2018, from <http://stars.library.ucf.edu/cgi/viewcontent.cgi?article=3282&context=etd>.
- 70 "What's Wrong with Our Schools?" EdChoice (1979/1980). Retrieved on June 7, 2018, from <https://www.edchoice.org/who-we-are/our-founders/the-friedmans-on-school-choice/article/whats-wrong-with-our-schools>.

- 71 Martin Lueke. 2016. "How to Accurately Calculate the Fiscal Impact of School Voucher Programs," EdChoice. Retrieved on March 29, 2018, from <https://www.edchoice.org/blog/how-to-accurately-calculate-the-fiscal-impact-of-school-voucher-programs>.
- 72 "EdChoice School Choice FAQs: How Does School Choice Affect Public Schools?" Retrieved April 2, 2018, from https://www.edchoice.org/school_choice_faqs/how-does-school-choice-affect-public-schools.
- 73 Focus Group Parent.
- 74 GAO-18-94, 2017, p. 28.
- 75 Focus Group Participant.
- 76 COPAA conducted research for the National Council on Disability for this report.
- 77 Issue Brief: Voucher Programs, National Center for Learning Disabilities (2017). Retrieved from <https://www.ncl.org/wp-content/uploads/2014/11/Voucher-brief-in-LJ-template.pdf>.
- 78 Ulrich Boser, Meg Benner, and Erin Roth. 2018. "The Highly Negative Impact of Vouchers." Center for American Progress. Retrieved on March 20, 2018, from <https://www.americanprogress.org/issues/education-k-12/reports/2018/03/20/446699/highly-negative-impacts-vouchers>.
- 79 Meg Benner and Rebecca Ullrich. "Betsy DeVos' Threat to Children with Disabilities." Center for American Progress. Retrieved February 2, 2017, from <https://www.americanprogress.org/issues/education-k-12/reports/2018/03/20/446699/highly-negative-impacts-vouchers>.
- 80 GAO-16-712, School Choice (2016), p. 14.
- 81 GAO (2016), p. 14.
- 82 Yvonne Wingette Sanchez and Rob O'Dell. 2017. "Arizona's New School Voucher Program Is on Hold. Now What?" *The Republic*. Retrieved from <https://www.azcentral.com/story/news/politics/arizona-education/2017/04/20/arizona-expanding-its-school-voucher-empowerment-scholarship-account-program-now-what/100352304>.
- 83 GAO (2016), p. 5.
- 84 See Appendix B. It is important to note that students with disabilities may participate in state programs that do not require a student to have a disability to participate. It is not possible to know how many students with disabilities participate across all private school choice programs because many programs do not collect this information. See GAO-16-712.
- 85 Albert Ceng and Paul E. Peterson. 2017. "How Satisfied Are Parents with Their Children's Schools?" *Education Next*, Spring.
- 86 Anya Kamanetz. 2015. "A New Study Reveals Much about How Parents Really Choose Schools." Retrieved from <https://www.npr.org/sections/ed/2015/01/15/376966406/a-new-study-reveals-much-about-how-parents-really-choose-schools>.
- 87 Ibid.
- 88 EdWeek. 2017. "Parents See Benefits in Spec. Ed. Vouchers, But No Silver Bullet" Retrieved from <https://www.edweek.org/ew/articles/2017/03/22/parents-see-benefits-in-spec-ed-vouchers.html>.
- 89 Focus Group Participant.
- 90 Kamanetz, 2015.
- 91 <https://www.understood.org/en/school-learning/partnering-with-childrens-school/instructional-strategies/barton-reading-program-what-you-need-to-know>
- 92 EdWeek. 2017. "Florida's Voucher Program." Data Snapshot.
- 93 Ibid.
- 94 Casey Quinlan. 2017. "Vouchers Don't Help Disadvantaged Students, Regardless of What DeVos Thinks," *Think Progress*. Retrieved on June 12, 2018, from <https://thinkprogress.org/vouchers-dont-help-students-73d120597c35>.
- 95 The Century Foundation. 2017. "School Vouchers and Race: It's Complicated." Retrieved from <https://tcf.org/content/commentary/school-vouchers-race-complicated>.
- 96 Ibid.

- 97 John M. McKay Scholarship Program. "February 2018 Quarterly Report." Retrieved from <http://www.fldoe.org/core/fileparse.php/7559/urlt/McKay-February-2018-Quarterly-Report.pdf>.
- 98 Cory Turner, Eric Weddle, and Peter Balonon-Rosen. 2017. "The Promise and Peril of School Vouchers." Retrieved from <https://www.npr.org/sections/ed/2017/05/12/520111511/the-promise-and-peril-of-school-vouchers>.
- 99 Justia, U.S. Supreme Court. *Brown v. Board of Education of Topeka*, 349 U.S. 294 (1955), available at <https://supreme.justia.com/cases/federal/us/349/294/case.html> (last accessed July 2017).
- 100 Kara Miles Turner, "Both Victors and Victims: Prince Edward County, Virginia, the NAACP, and 'Brown,'" *Virginia Law Review* 90, no. 6(2004): 1667–1691.
- 101 Chris Ford, Stephanie Johnson, and Lisa Partlow. 2017. "The Racist Origins of Private School Vouchers." Retrieved from <https://www.americanprogress.org/issues/education-k-12/reports/2017/07/12/435629/racist-origins-private-school-vouchers>.
- 102 Sharif El-Mekki. 2017. "Black People Support Vouchers, Black Leaders Don't. Who's Right?" *The Root*. Retrieved on May 7, 2018, from <https://www.theroot.com/black-people-support-vouchers-black-leaders-don-t-who-1795711457>.
- 103 Emma Brown. 2017. "NAACP: School Choice Not the Answer to Improving Education for Black Students." *The Washington Post*. Retrieved on June 7, 2018, from https://www.washingtonpost.com/local/education/naACP-school-choice-is-not-the-answer-to-improving-education-for-black-students/2017/07/26/7b4edcf0-721c-11e7-9eac-d56bd5568db8_story.html?noredirect=on&utm_term=.06cf5681d88c.
- 104 National Disability Rights Network Press Release. 2017. Retrieved from <http://www.ndrn.org/en/home/5/649-gao-school-choice-study.html>.
- 105 Office for Civil Rights, U.S. Department of Education. *2015–16 Civil Rights Data Collection: Data Highlights on School Climate and Safety in Our Nation's Public Schools* (April 2018). Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.
- 106 Civil Rights Data Collection. Data Snapshot: "School Discipline." Available at <https://ocrdata.ed.gov/downloads/crdc-school-discipline-snapshot.pdf>. See "Sent Home and Put Off Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the 9th Grade," in Daniel Losen, *Are We Closing the School Discipline Gap*, 17–30. Robert Balfanz, Vaughn Byrnes, and Joanna Fox. 2011.
- 107 Daniel J. Losen and Tia Elena Martinez. 2013. *Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools* (April 8, 2013). Available at <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools>.
- 108 Virginia Costenbader and Samia Markson. 1998. "School Suspension: A Survey of Current Policy and Practices." *NASSP Bulletin*, 78. Russ Skiba and Reece Peterson. 1999. "The dark side of zero tolerance: Can punishment lead to safe schools?" *Phi Delta Kappan*, 80.
- 109 Available at https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.
- 110 Brea L. Perry and Edward W. Morris. 2014. *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*. Available at <http://journals.sagepub.com/doi/abs/10.1177/0003122414556308>.
- 111 Lindsey M. O'Brennan, Catherine P. Bradshaw, and Michael J. Furlong. 2014. *Influence of Classroom and School Climate on Teacher Perceptions of Student Problem Behavior*. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4204794>.
- 112 Ibid.
- 113 EdWeek. 2017. "Parents See Benefits in Spec. Ed. Vouchers, But No Silver Bullet." Available at <https://www.edweek.org/ew/articles/2017/03/22/parents-see-benefits-in-spec-ed-vouchers.html>.
- 114 GAO-16-712 (2016). *Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students*, p. 3. Available at <https://www.gao.gov/products/GAO-16-712>.
- 115 Jay P. Greene and Marcus A. Winters, "Debunking a Special Education Myth," *Education Next* 7, no. 2 (Spring 2007). Available at <http://educationnext.org/debunking-a-special-education-myth>.

- 116 S. Buck and J. P. Greene. 2010. "The Case for Special Education Vouchers," *Education Next* 10(1): 36–43. Retrieved from <http://educationnext.org/the-case-for-special-education-vouchers>. See also: <https://www2.ed.gov/about/offices/list/oii/nonpublic/idea1.html>.
- 117 Greene and Winters, "Debunking a Special Education Myth."
- 118 Almazan and Marshall. 2016, p. 14.
- 119 National Coalition for Public Education. Available at https://www.ncpecoalition.org/s/NCPE_TP_Students-with-Disabilities.pdf.
- 120 Focus Group Participant.
- 121 Ibid.
- 122 Almazan and Marshall. 2016, p. 6. See also <https://www2.ed.gov/about/offices/list/oii/nonpublic/idea1.html>.
- 123 Megan Casey Whittaker. 2017. "The Average Voucher Doesn't Cover Full Cost of Private School, NCLD Data Analysis Shows," National Center for Learning Disabilities. Retrieved on May 17, 2018, from <https://www.understood.org/en/community-events/blogs/the-inside-track/2017/11/21/the-average-voucher-doesnt-cover-full-cost-of-private-school>.
- 124 Focus Group Participants and Interviews.
- 125 Focus Group Participant.
- 126 Department of Education. Retrieved February 21, 2018, from <https://www.louisianabelieves.com/schools/school-choice-for-students-with-disabilities>.
- 127 National Center on Learning Disabilities. 2017. *Vouchers, Education Savings Accounts, and Tax Incentive Programs Implications and Considerations for Students with Disabilities*, p. 16. Retrieved from <https://www.nclld.org/wp-content/uploads/2017/10/SV-ESA-TI-White-Paper.pdf>.
- 128 National Center for Learning Disabilities, Voucher Programs Issue Brief. 2017. Retrieved from <https://www.nclld.org/wp-content/uploads/2014/11/Voucher-brief-in-LJ-template.pdf>.
- 129 Interview with Stakeholder.
- 130 <https://nces.ed.gov/programs/coe>.
- 131 Florida's Voucher Program: Data Snapshot and List of Participating Schools. 2017. Retrieved from <https://www.edweek.org/ew/section/multimedia/floridas-voucher-program-data-snapshot-and-list.html>.
- 132 Focus Group Participant.
- 133 Ibid.
- 134 Anya Kamenetz. 2017. "For Families with Special Needs, Vouchers Bring Choices, Not Guarantees." Retrieved from <https://www.npr.org/sections/ed/2017/05/17/527938057/for-families-with-special-needs-vouchers-bring-choices-not-guarantees>.
- 135 GAO 2018-94 report, p. 11.
- 136 Elizabeth Mann and Diana Quintero. 2017. *States Could Lead the Way in Private School Choice Program Expansions*. Brown Center Chalkboard. Available at <https://www.brookings.edu/blog/brown-center-chalkboard/2017/04/05/states-could-lead-the-way-in-private-school-choice-program-expansions>.
- 137 M. Dynarski, N. Rui, A. Webber, and B. Gutmann. "Evaluation of the DC Opportunity Scholarship Program: Impacts Two Years after Students Applied" (NCEE 2018-4010). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education. Retrieved on June 7, 2018, from <https://ies.ed.gov/ncee/pubs/20184010/pdf/20184010.pdf>.
- 138 Cory Turner and Anya Kamenetz. 2017. "School Vouchers Get 2 New Report Cards," nprED, 2017. Available at <https://www.npr.org/sections/ed/2017/06/26/533192616/school-vouchers-get-a-new-report-card>.
- 139 D. Figlio and K. Karbownik. 2016. "Evaluation of Ohio's EdChoice Scholarship Program: Selection, Competition, and Performance Effects." Fordham Institute, p. 2. Available at <https://edexcellence.net/publications/evaluation-of-ohio%E2%80%99s-edchoice-scholarship-program-selection-competition-and-performance>.
- 140 "How Has the Louisiana Scholarship Program Affected Students." Available at <https://educationresearchallianceola.org/publications/how-has-the-louisiana-scholarship-program-affected-students>.
- 141 Ibid.

- 142 Jonathan Mills and Patrick Wolf. "Vouchers in the Bayou: The Effects of the Louisiana Scholarship Program on Student Achievement after 2 Years," *Education and Policy Analysis* 39, no. 3 (September 2017): 464, 473.
- 143 Focus Group Participant.
- 144 AFC, p. 23.
- 145 Ibid.
- 146 Arianna Prothero. "There Is No Oversight" Private—School Vouchers Can Leave Parents on Their Own," *EdWeek*, November 14, 2017. Available at <https://www.edweek.org/ew/articles/2017/11/15/there-is-no-oversight-private-school-vouchers-can.html>.
- 147 20 U.S.C. § 1415(k)(1), (7) and 34 C.F.R. § 300.530.
- 148 Leslie Posta, Beth Kassab and Annie Martin. "Schools Without Rules," *Orlando Sentinel*. Retrieved on February 23, 2018, from <http://www.orlandosentinel.com/features/education/os-florida-school-voucher-investigation-1018-htmlstory.html>.
- 149 Nat Malkus and Tim Keller. "Federal Special Education Law and State School Choice Programs," *The Federalist Society Review* 18(2017): 22.
- 150 Focus Group Participant.
- 151 GAO-18-94, 2017, pp. 11–13.
- 152 National Center for Education Statistics. "Fast Facts: Students with Disabilities." Available at <https://nces.ed.gov/fastfacts/display.asp?id=64> (last accessed January 2017); U.S. Department of Education. 2016. "Fiscal Year 2016 Congressional Action." Available at <https://www2.ed.gov/about/overview/budget/budget16/16action.pdf>.
- 153 National Council on Disability. 2012. *National Disability Policy: A Progress Report*, 60; Wendy F. Hensel. "Recent Developments in Voucher Programs for Students with Disabilities," 59 *Loyola Law Review* 323, 330(2013).
- 154 *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).
- 155 *Brumfield v. Dodd*, 405 F. Supp. 338 (E.D. La. 1975).
- Brumfield v. Dodd*, 425 F. Supp. 528 (E.D. La. 1976).
- Brumfield v. Dodd*, No. 71-1316, 2013 WL 360572 (E.D. La. Jan. 30, 2013).
- Brumfield v. Dodd*, 749 F.3d. 339 (5th Cir. 2014).
- Brumfield v. Dodd*, No. 13-31262, 2014 WL 3828724 (E.D. La. April 10, 2014).
- Available at http://www.nola.com/education/index.ssf/2015/06/louisiana_school_voucher_appea.html.
- 156 Available at http://www.nola.com/education/index.ssf/2013/11/federal_government_has_right_t.html.
- 157 20 U.S.C. §§ 6301 et seq.
- 158 AFC, p. 24.
- 159 20 U.S.C. § 1411(a)(1).
- 160 Id. at § 1411(a)(2).
- 161 20 U.S.C. § 1411(f)(1).
- 162 20 U.S.C. § 1412(a).
- 163 *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. PA 1971) (finding unconstitutional under the Fourteenth Amendment a state law that allowed schools to refuse to serve students with disabilities and creating the FAPE and LRE standards); *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972) (finding that the Constitution prohibits excluding students with disabilities owing to budget constraints and requires due process protections before a change of school placement for a student with a disability).
- 164 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. FAPE consists of "specially designed instruction" that adapts the content, methodology, or delivery of instruction "[t]o address the unique needs of the child that result from the child's disability; and . . . [t]o ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." 34 C.F.R. § 300.39(b)(3).

- 165 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.17(b), (c); 20 U.S.C. § 6311(b)(1), 34 C.F.R. § 200.1(a), (b), (c).
Also see 34 C.F.R. § 104.33(a).
- 166 34 C.F.R. § 300.320(a)(1)(i), (a)(4).
- 167 34 C.F.R. § 300.114.
- 168 34 C.F.R. § 300.116(e).
- 169 National Center for Education Statistics. “Fast Facts: Students with Disabilities.” Available at <https://nces.ed.gov/fastfacts/display.asp?id=64> (last accessed January 2017). U.S. Department of Education. 2016. “Fiscal Year 2016 Congressional Action.” Available at <https://www2.ed.gov/about/overview/budget/budget16/16action.pdf>.
- 170 Meg Benner and Rebecca Ullrich. 2017. *Betsy DeVos’ Threat to Children with Disabilities*. Center for American Progress. Retrieved from <https://www.americanprogress.org/issues/education-k-12/reports/2017/02/02/298010/betsy-devos-threat-to-children-with-disabilities>.
- 171 The “child find” provision of the IDEA and Section 504 remain intact. The local education agency still has the obligation to locate, identify, and evaluate students in private schools. 20 U.S.C. 1412(a)(3) and 34 C.F.R. § 104.32.
- 172 National Council on Disability, *National Disability Policy: A Progress Report*, 60 (2012); Hensel, *supra* note 1, at 330.
- 173 OCR Staff Memorandum, 22 IDELR 666 (July 27, 1990).
- 174 Letter to Bowen, 35 IDELR 129 (OCR, March 23, 2001).
- 175 Compare: *Lower Merion School District v. Doe* reaffirmed that private school students [in PA] have the right to seek services under IDEA from their LEA as dually enrolled students. 593 Pa. 437 (2007). See *Lower Merion School District v. Doe*, 593 Pa. 437 (2007).
- 176 See <https://ies.ed.gov/hceelpubs/20174022/pdf/20174022.pdf>; see p. 17.
- 177 Mark C. Weber. 2007. *Services for Private School Students under the Individuals with Disabilities Education Improvement Act: Issues of Statutory Entitlement, Religious Liberty, and Procedural Regularity*, p. 3.
- 178 See <https://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf>.
- 179 *Id.* at 1.
- 180 *Id.* at 4.
- 181 20 U.S.C. § 1412(A)(10).
- 182 *Id.*
- 183 20 U.S.C. § 1412(a)(10)(A)(vi).
- 184 20 U.S.C. § 1412(a)(10)(C).
- 185 509 U.S. 1 (1993).
- 186 512 U.S. 687 (1994).
- 187 521 U.S. 203 (1991).
- 188 20 U.S.C. § 1412 (a)(10)(A)(iii)(IV).
- 189 *Id.*
- 190 See IDEA: *Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools*. Available at <https://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf>, at 1 on March 2011.
- 191 *Id.* at 1.
- 192 *Id.* at 11.
- 193 *Id.* at 11–12.
- 194 *Id.* at 12.
- 195 *R.E.*, 694 F.3d at 191–192.
- 196 Cases in the Second Circuit are analogous because, while that Circuit has held that the IEP need not list a specific school, school districts are still required to recommend a school that can implement the instruction and services on the IEP. See *id.*; *D.C. v. N.Y.C. Dep’t of Educ.*, 950 F.Supp.2d 494 (S.D.N.Y. 2013) (holding that

- Department of Education failed to offer the student a FAPE where the recommended school placement told the mother that it could not implement a medical mandate on her son's IEP that he be educated in a seafood-free environment); *B.R. v. N.Y.C. Dep't of Educ.*, 910 F. Supp. 2d 670 (S.D.N.Y. 2012) (holding that DOE failed in its burden to show that the proposed public school placement could implement the student's IEP).
- 197 20 U.S.C. § 1400(d)(1)(A); see *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 367 (1985).
- 198 20 U.S.C. § 1412(a)(1)(A).
- 199 *Burlington*, 471 U.S. at 367.
- 200 *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 187–188, 203 (1982).
- 201 *A.K. ex. Rel. J.K. & A.S. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 681 (4th Cir. 2007).
- 202 *Id.* (citing *Rowley*, 458 U.S. at 207).
- 203 S. S. Taylor, "School Vouchers: Views from a Special Education Perspective," *Journal of School Choice* 1, no. 3(2006): 29–53, 37–38.
- 204 Wendy F. Hensel, "Vouchers for Students with Disabilities: The Future of Special Education?" *Journal of Law and Education* 39, no. 291(2010): 12–13.
- 205 See *Alexander v. Choate*, 469 U.S. 287, 300-01 (1985) (Section 504 may require reasonable modifications to a program or benefit to assure meaningful access to qualified persons with disabilities); *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979) (Section 504 does not prohibit a college from excluding a person with a serious hearing impairment as not qualified where accommodating the impairment would require a fundamental alteration in the college's program). As the Department of Education has explained, "To be clear, however, neither the fundamental alteration nor undue burden defense is available in the context of a school district's obligation to provide a FAPE under the IDEA or Section 504. See 20 U.S.C. § 1414(d)(1); 34 C.F.R. § 104.33." See Department of Education Dear Colleague Letter, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html#fn8>, at fn. 17.
- 206 Department of Education Dear Colleague Letter, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html#fn8>, at fn. 17.
- 207 *Mark H. v. Lemahieu*, 513 F.3d 922 (9th Cir. 2008).
- 208 34 C.F.R. § 104.33(b)(1).
- 209 cf. 20 U.S.C. §§ 1401(9), 1414(d)(1)(A)(i)(II).
- 210 Title VI Manual, available at <https://www.justice.gov/crt/fcs/T6manual5>, at Chapter V § C.2.f. (internal citations omitted).
- 211 *Grove City College v. Bell*, 104 S.Ct. 1211 (1984).
- 212 *Id.* at 1216–1217.
- 213 *Alfano v. Bridgeport Airport Servs.*, 373 F. Supp. 2d 1, 5 (D. Conn. 2005) (citing *Paralyzed Veterans*, 477 U.S. at 605–606).
- 214 See Title VI Manual at Chapter V § C.1.d.
- 215 45 C.F.R. § 92.4.
- 216 U.S. Treasury, Preamble to Regulation Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of Treasury, 31 C.F.R. Part 22 at B.2, 81 Fed. Reg. 89853-54.
- 217 34 C.F.R. § 104.39.
- 218 34 C.F.R. § 104.4(b)(vi).
- 219 28 C.F.R. § 35.130; § 35.160.
- 220 28 C.F.R. § 35.164.
- 221 42 U.S.C. § 12187.
- 222 U.S. Department of Justice, *Letter to Evers* (April 9, 2013). Available at https://www.aclu.org/files/assets/04_09_13_letter_to_wisconsin_dpi_0.pdf.

- 223 *Liberty Resources, Inc. v. Philadelphia Housing Authority*, 528 F. Supp. 2d 553 (E.D. Pa. 2007).
- 224 See also Wendy F. Hensel, "The Limits of Federal Disability Law: State Educational Voucher Programs," *Journal of Law and Education* 44, no. 199 (2015): 219–224.
- 225 *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) held that Ohio's school voucher program did not violate the First Amendment's establishment of religion clause, despite the large number of students attending religious schools with school vouchers. The court reasoned that the program did not violate the Establishment Clause because the program (1) was enacted for the valid secular purpose of providing educational assistance to poor children in a demonstrably failing public school system, and (2) was a program of true private choice that did not have the effect of advancing religion.
- 226 See <https://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/15-577.htm>.
- 227 See http://www.huffingtonpost.com/rep-chris-taylor/back-to-alec-back-to-priv_b_8055540.html?utm_hp_ref=politics.
- 228 See http://www.washingtonpost.com/local/education/aclu-says-its-suing-to-stop-nevadas-new-school-voucher-program/2015/08/27/db57dcd2-4cd0-11e5-902f-39e9219e574b_story.html.
- 229 Arizona, Florida, and Wisconsin's voucher programs explicitly include students with Section 504 Plans. See <http://www.edchoice.org/school-choice/school-choice-in-america>.
- 230 *Brumfield v. Dodd*, 425 F. Supp. 528 (E.D. La. 1976).
- 231 U.S. Memorandum in Support of Its Motion to Extend Time to Respond to Discovery. Retrieved from <http://www.gov.state.la.us/assets/docs/10-29-13%20-%20DOJ%20Motion%20to%20Postpone.pdf>.
- 232 Retrieved from <http://www.politico.com/story/2013/11/justice-department-louisiana-voucher-program-100072>.
- 233 A 1990 Office for Civil Rights staff memorandum also states that students who are placed in private schools through the Milwaukee Choice Program are considered to be parentally placed in private schools and are not covered by the IDEAs protections. See: OCR Staff Memorandum, 22 IDELR 666 (July 27, 1990). A 2001 OCR letter, *Letter to Bowen* reiterated this point, stating that participating students in Florida's McKay Program "are considered 'private school children with disabilities' enrolled by their parents. . . . [S]uch parentally placed private school students with disabilities have no individual entitlement to a free appropriate public education including special education and related services in connection with those placements." See *Letter to Bowen*, 35 IDELR 129 (OCR March 23, 2001); Compare *Lower Merion School District v. Doe*, which reaffirmed that private school students [in PA] have the right to seek services under IDEA from their LEA as dually enrolled students. 593 Pa. 437 (2007). See *Lower Merion School District v. Doe*, 593 Pa. 437 (2007).



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Chairman BEAN. We will now yield to the State of Michigan, where Representative Lisa McClain is recognized for her 5 minutes. Representative McClain, you are recognized.

Mrs. MCCLAIN. Thank you. Before I get started, Ms. Raymond, did you want to finish your thought?

Ms. RAYMOND. I was done. Thank you.

Mrs. MCCLAIN. Okay. Thank you. Then I will start just with a general question to Mr. Heilig because we have talked a lot about charter schools and what happens if they close, and we are all concerned about that, right? Goodness gracious, what happens if the close in the middle of a school year, right?

We want to make sure that we are protecting the children. What happens when a public school fails?

Mr. VASQUEZ HEILIG. Well, that is a good question. How do you define failing, Congresswoman?

Mrs. MCCLAIN. Same way we define failure for charter schools. What happens—it is real simple. One, do you have a determination whether a public school is failing? Yes or no? Yes, you do?

Mr. VASQUEZ HEILIG. Well, I was asked to do that at work for Rod Page when I worked in Houston. Did you want me to say more on that, or just leave it?

Mrs. MCCLAIN. I am just asking. Do we have a measurement for when a public school fails? Yes we do, no we do not.

Mr. VASQUEZ HEILIG. Bureaucrats do create arbitrary measures for a failing school. Yes.

Mrs. MCCLAIN. Yes, we have that measure for when public schools fail?

Mr. VASQUEZ HEILIG. Yes. Bureaucrats do create that now. Yes.

Ms. MCCLAIN. Okay. I appreciate that. What happens to a public school when it fails?

Mr. VASQUEZ HEILIG. Well, we should make investments in—

Ms. MCCLAIN. I am not asking what should, I am asking when a public school fails what happens?

Mr. VASQUEZ HEILIG. Well, I could tell you what happens in Texas. In Houston, they have gone and taken away the schools from the community. That is what is happening in Houston. I think that we need to make investments in the things that we know matter.

Ms. MCCLAIN. I understand. When a public school fails, this is what I am trying to wrap my head around.

Mr. VASQUEZ HEILIG. Sure.

Ms. MCCLAIN. We have two separate sets of rules for the same children, which is kind of interesting to me.

Mr. VASQUEZ HEILIG. Okay.

Ms. MCCLAIN. If a charter school fails, we have all these rules and regulations and it closes, right? If a public school fails with less rules, less regulations, we just want more money to fix the problem. If money is the answer for public schools, why would we not give money to the answer for charter schools? With that, I am going to switch my questioning now to Mr. Pondiscio.

The National School of Choice Awareness Foundation January's survey found that 72 percent of parents considered not—but considered different schools for their children. A 35 percent increase since

2022, right? What do you see is driving such a significant increase in school of choice? 35 percent.

Mr. PONDISCIO. Yes. I think the short answer may be COVID. For years I have pointed out that what happens inside of the American school classroom is a bit of a black box. We do not really know. COVID ripped the lid off of that black box, as it were, so suddenly your child's school was coming onto your laptop, onto your kitchen table every day all across America.

In many, and hopefully most instances, the parents were edified by what they saw. In some number of cases, unfortunately, parents were aghast at what they saw. When parents are unhappy with their school, they tend to want something else. If they are in a public school that is not doing well, then they are going to seek choice.

Congresswoman, if I also may just answer your previous question about what happens when a public school fails, well in 2002, I went to work at the lowest performing public school in New York City's lowest performing district. It is now 2024, that school is now the lowest performing school in New York City's lowest performing district.

Mrs. MCCLAIN. Well, we just have measurements, I thought we just talked about we had measurements for those public schools when they close. Why did that one not close?

Mr. PONDISCIO. That is a very good question, Congresswoman.

Mrs. MCCLAIN. Hmm. Did we have—that is interesting, but we care about the children, right? Okay. Just checking. In my district over—we have 3,300 charter school students, right? I am wondering if you could help—there is a need, there is a want, maybe not a need, but a want for more charter schools, right?

There is a waiting list to get in, right, which I would think would be a good thing. Can you describe the roadblocks that exist at the local and State level in developing more options?

Mr. PONDISCIO. Sure.

Mrs. MCCLAIN. Why can we not have more of these schools that parents are demanding for their children?

Mr. PONDISCIO. I understand that we are talking about this at the Federal level, but in New York, where I have spent my entire education career, there has been a charter school cap in place for nearly a decade. Despite the fact that the City in particular, New York City, is home to some of the highest performing, highest demand public charter schools in the country, there has been no more room at the inn, so to speak. State lawmakers have blocked the creation of new charters.

Mrs. MCCLAIN. Why do you think we are so afraid and so scared of charter schools?

Mr. PONDISCIO. That is a very good question. I do not have an answer for you.

Mrs. MCCLAIN. With that, Mr. Chairman, I yield back.

Chairman BEAN. Thank you very much. Let us go to the great State of Connecticut, where Representative Hayes is recognized. You are recognized.

Mrs. HAYES. Thank you and thank you to all of our witnesses for being here today. I just want to make a few corrections to the record before I get into my remarks. First of all, teaching virtually is a skillset, so this idea that people turned on their computers and

were aghast by what they saw, many of our educators had never had the investments made in what it takes to teach students virtually, which is a different skillset.

For that to be the metric of evaluation for what is happening in our public schools, it is just wrong and inaccurate. I am not sure where in the country a teacher would only be evaluated two times in 5 years. Teacher evaluations are part of our school systems.

I was evaluated every year, multiple times a year, on things like student learning objectives, standards-based observations. Parent and peer feedback, whole school measures and also student feedback. You cannot advance as a teacher and maintain your certification without evaluation, so that needs to be said. There is already a partnership in place between parents and teachers.

I have to shout out from my own home State of Connecticut, our PTA Chairman, Joe Accomando, who is here in the gallery today listening. Listen, I am an educator, and I support school choice. I support high quality public charter schools. There are no exceptions, but I also recognize the importance of specialized learning.

Schools with a focus on a particular strand or a topic because these schools can engage students in a very different way and help them to excel in their learning. Charter schools get to pick and choose if and when they will accept a special education population. They get to choose to exclude students based on disciplinary or attendance issues.

Public schools cannot do that. We have to support all students, no matter what they bring to the table. Even the kids who have no one else advocating for them. Even to your point the Tiffanys.

That is our job, to support all students, so why then are we not talking about making all schools the best that they can be, instead of picking off and creating subsets where a select handpicked group of students have access to high quality specialized learning.

As a parent, I would expect that for my child, and I want that as a teacher for every child. That should be our response. I also do not support moving public funds from students who need it most, to fund for-profit charter networks. The Department of Education invests millions of dollars in charter schools, so we must have transparency and oversight of these funds, and that is not unreasonable.

To my colleague's point, these are questions that for a decade still have not been answered. Dr. Vasquez Heilig, in your testimony you mention that charter schools have higher rates of teacher turnover, and lower teacher quality than traditional public schools.

Can I ask you why public schools are able to retain quality teachers at higher rates than most public charter schools?

Mr. VASQUEZ HEILIG. That is a great question, and I think there is a lot of peer reviewed research on this topic. The charter teachers say it is because there is a lot of inexperienced teachers in charter schools. One fifth of public school teachers have less than 3 years' experience.

One third of charter school teachers have that experience. They also have a challenge with experienced leaders and working conditions. Right here in D.C., 25 percent of teachers turn over in public, neighborhood public schools, 40 percent in charter schools according to a Washington Post piece that I recently saw.

It is very well established in the research literature on average because we are talking about the averages here, that charter schools have less experienced teachers, and they are less qualified, and they have higher turnover.

Mrs. HAYES. According to the Network of Public Education, over 15 percent of charter schools around the country are run by for-profit corporations. Do you think that a mandatory spending report, or other measures by Congress would help in providing transparency to where these funds are going?

Mr. VASQUES HEILIG. We absolutely need more accountability. There was a comment about money for these planning grants, with the CSP grant, and I have been a CSP reviewer for the U.S. Department of Education. We have seen a billion dollars going to planning grants for schools that either never opened or closed after a year.

There is excessive malfeasance in terms of the finances in the charter school sector.

Mrs. HAYES. Thank you. I do not have much time, so I will end by thanking you all for your testimony, and just reminding you that investing in our teachers and in our public schools, is the way that we reach all students. This idea about picking out and pulling out the most egregious statistics about failing schools should be our call to action, not us turning away from the kids who need it most, or the kids that have no one but us advocating for them. With that, I yield back.

Chairman BEAN. Thank you very much, Representative. Let us go to the great State of Illinois, where Representative Miller is recognized. Representative Miller.

Mrs. MILLER. Thank you, Chairman Bean, and thank you to all of our witnesses for being here today.

Mr. Campbell.

Mr. CAMPBELL. Yes, ma'am?

Mrs. MILLER. You mentioned in your testimony that 67 percent of Baton Rouge charter schools are surpassing their pre-pandemic test scores. Congratulations.

Mr. CAMPBELL. Thank you.

Mrs. MILLER. Which is roughly double the percentage of traditional public schools in Baton Rouge achieving the same success. That number is simply remarkable. What do you think explains the charter school success in Baton Rouge?

Mr. CAMPBELL. I think several things. One, being able to be in that smaller environment where you are worried primarily about the kids in that building gives you a laser like focus on those kids and their needs and their interests.

We have a school district, and you are kind of worried about everybody and everything, it is kind of hard to forget about the one kid, and what does that one kid need? I think charter schools being mission aligned, and mission focused really digging in on instruction, and understanding you know, kind of what the learning loss during COVID entailed, and how they can get past that.

I think our schools have done a wonderful job. We have further to go, but by far we want to be far better. We are really encouraged that those schools are back to that level. We think they could be even better next year, so that is what we are focused on.

Mrs. MILLER. That is great. Mr. Campbell, I am also deeply impressed by your dedicated service to our country, having served 8 years on active duty, and an additional 13 years in the Reserves. First and foremost, thank you so much for your commitment and sacrifice to preserve our freedom.

Mr. CAMPBELL. Thank you. Yes, ma'am.

Mrs. MILLER. Your contributions are truly commendable, and our Nation is indebted to individuals like you. In your testimony you highlighted the potential of charter schools in addressing the unique needs of military families. Could you elaborate on how charter schools can effectively cater to the specific needs of military families?

Mr. CAMPBELL. Yes, ma'am. First, it is knowing the kids. The reality is you know, our military families, especially in the post-911 era, you know, they were facing frequent deployments, and so our family members were gone all the time. What does that mean to a kid who is in your school, you know, if they have a dad gone, or a mom gone for an extended period of time?

Frequent TDY's, the fact that they are moving every two to 3 years and they are at a different community with different friends, all those things affect kids and how they learn, and their ability to be deeply connected to teachers and schools. A school that recognizes that and those little things, for example, when you walk into Bell Chase, you know, shortly after 9/11, you would see banners hanging in the entryway with the names of every parent who was deployed, right?

That kids would walk through that on their way into school knowing that people cared about their family member, and that they were praying for them, and hoping for their success. The fact that these kids have to go on to different school district, and they need to be on grade level.

All those sorts of things I think made a big difference to the families, you know, just south of New Orleans, and I am hoping that other schools can have also that laser like focus on particular kids who go into their doors.

Mrs. MILLER. Thank you, Mr. Campbell, and may God continue to bless and grant you wisdom as you seek to be impactful in these children's education, and Chairman, I yield back.

Chairman BEAN. Thank you very much, Representative. Let us go to the great State of Florida where Representative Wilson, you are recognized, good morning.

Ms. WILSON. Thank you, home boy. Thank you, Chairman Bean, Ranking Member Bonamici, and thank you to our witnesses for your testimony today. I must State upfront that I find your claims of charter schools outperforming public schools to be not only misleading but entirely deceptive and unfounded. Charter schools have failed to uphold their promises to the communities they serve.

A number of years ago, I became a public school teacher to keep the promise that traditional public schools make. My mission was clear to provide Black and Brown children with opportunities for life, knowledge, civic engagement, and the pursuit of the American dream.

Charter schools fall short of this promise. Instead, poorly monitored charter schools deliver subpar academic results, snatch

money from our public schools, and then wash their hands clean of any responsibility. On top of that in my home State of Florida, we see charters exacerbate patterns of resegregation along racial, ethnic, and socioeconomic lines.

In Florida, Black students consistently perform worse in charter schools than in their traditional public schools. While Florida's charters boast more A rated schools, they also lead the pack in F rated institutions, compared to public schools, and that is just the reality.

In fact, in 2022, News4Jax report revealed that 10 out of 40 Duval County charter schools received D or F grades from the State. Does this sound consistently successful to you? Help me make sense of this. Again, the assertion that charters are best for minority, low-income communities, is not just misleading but downright dangerous and destined for failure.

In a WTSP Tampa Bay report, Florida's charter school statistics paint a grim picture, a staggering 409 charter schools have shut down since the first opened in Florida in 1996. That is a 40 percent failure rate. As a former teacher, and former principal, myself, let us recap what we have learned.

What are charter schools actually good at, if anything? We have learned that charter schools are good at snatching Florida's money that should be going to public schools, leaving them deprived. Then, they peddle substandard education. When the damage is done, they shut down and leave nothing but chaos in their wake.

This is what we get with charter schools. We as a nation have worked very hard, made so many gains, and we simply cannot continue to regress into an educational landscape where we fail to keep the promises we have made to our children. The very first charter school in the Nation was established in my hometown of Florida, Miami, Florida, by Jeb Bush, who used that platform to win the Governorship of Florida.

After the school board, which I served on, passed the charter provision, despite my protest, I worked with Mr. Bush side by side to make sure that the school was at least halfway equal to our public schools. It was not, and it soon closed. Please stop diverting funds from public schools to experiment with our children. With that, I have a few questions.

Dr. Vasquez Heilig, data is consistently showing that traditional public schools are increasing in performance over time. Meanwhile, charters have higher teacher turnover rates. Would it not make sense to invest in our traditional public school system, rather than splintering our resources in a variety of school types?

Mr. VASQUEZ HEILIG. Yes. This is particularly important for the African American community. The NAACP has had five resolutions on charter schools, and the one in about 2010 made exactly this point. This is why the NAACP called for a moratorium on charter schools in 2016, and this is especially important because in urban areas, one in every five Black students is now attending a charter school.

Ms. WILSON. I am out of time. Thank you.

Chairman BEAN. Thank you, Representative Wilson. Let us go to Utah where the Chair of the Higher Ed Subcommittee is recognized. Burgess Owens, Representative Owens, you are recognized.

Mr. OWENS. Thank you. Thank you so much, Mr. Chairman. Mr. Heilig, I would like to ask a quick question. Would you agree with—I will get to what the question is, what is the priority of education? The child or the institution?

Mr. VASQUEZ HEILIG. Well, part of the education system should be to make the investments in our students, so they can have successful futures—

Mr. OWENS. No, no, no. Just—is it the child? Is that the priority? Or is the institution? There are two different focuses I think we are kind of dealing with right now?

Mr. VASQUEZ HEILIG. Investments in the children.

Mr. OWENS. Okay. Okay. The State of California 2017, 75 percent of the black boys in the State of California could not pass standard reading and writing tests. Here in Baltimore, three districts—zero proficiency in math. Should the parents of those children—well, let me also ask this.

Would you agree the parents of these children care about their kids as much as everybody else, even if they are poor, black, Hispanic, they still care about those kids that are failing?

Mr. VASQUEZ HEILIG. I am sorry. I do not understand.

Mr. OWENS. Would you agree that the parents of those children care about their kids as much as we do care about our kids?

Mr. VASQUEZ HEILIG. Absolutely.

Mr. OWENS. Okay. In a situation where there in these schools should parents have a choice of leaving failing public schools to go someplace else? Can I just reState this? 75 percent of black boys in the State of California fail to read, write and think. Should those parents have a choice of leaving those public—failing public schools, to go someplace where their kids have a chance to succeed?

Mr. VASQUEZ HEILIG. The question you asked has limited the responses I can provide. The response to the actual question is we need to make an investment in these children.

Mr. OWEN. Well, let me just say this. If we were talking about your child, I am sure you will say I want to choose someplace else. I have been hearing this for 40 years that we need to reinvest in these schools. Guess what happens? Every three to 4 years, kids are graduating not understanding how to succeed as we are talking about investing more into failing schools.

Should public school systems have the same level playing field, in terms of the outcome, as charter schools?

Mr. VASQUEZ HEILIG. Well, I think the record should say that charter schools should have the same accountability. Public schools have vastly more accountability in State law than charter schools do.

Mr. OWENS. Okay. Why are we having so much failure across our country? This is not just California, by the way. Everywhere, and by the way, let me just say this. It is happening more in black, Hispanic and low-income that this is going on.

Mr. VASQUEZ HEILIG. Yes, yes, yes. That is the elephant in the room in our country. We know that inequality is—20 billion dollars more go into districts that are primarily white compared to districts that are primarily Black and Latino.

Mr. OWENS. Well, let me just say this. I know that charter schools in the same communities as these public schools, so if you

go to a charter school you have a majority of black, Hispanic and low-income. You go to the same public school, charter, you are going to have the same geographics.

Mr. VASQUEZ HEILIG. Yes, but here is the answer. Here is the answer to that question. If I go into your local supermarket, I have \$10.00, and I have to split it three ways, that is completely different than if we invest it in a public choice decision. The vouchers, charters—

Mr. OWENS. Okay. Just let me say this because I do not want to get into too much of the weeds. I am going to ask you, and I look at this. The problem is accentuated, this here statement, by nationwide declining K through 12 student populations at public schools. That could be because parents realizing it is not working for their kids.

I think we have to—I understand this, how about we look at best practices? Have you ever thought about this? You look at what is going on in Baton Rouge, you look at what is going on in the Success Academy. If those are working, should we not replicate that if the focus is our kids?

Mr. VASQUEZ HEILIG. Well, I think that is a great question. We have a district in Louisiana that is all charter schools, and I do not think anybody is arguing that they are a model of educational success. After Katrina, charter schools were forced on New Orleans, and nobody is arguing that they are a beacon of educational success.

Mr. OWENS. No. We can also not argue, we have to argue that there is 75 percent failure rate in California, so those public schools are failing too. My point is we should have a standard for all of them because failing our kids, they should not be part of the equation, right? Would you agree with that?

Mr. VASQUEZ HEILIG. I agree we should have a high standard for all schools, absolutely.

Mr. OWENS. Okay. That means public schools also. If the public schools are failing, let us get rid of them. If charter schools are failing, let us get rid of them. A bottom line is our output of our kids being able to sit and have these kinds of conversations, to have a dream, the ability to move forward, only happen if they can read, write and think.

For us to talk about putting down the best practices of college, of situations that are working is we are—I am trying to understand why that is happening. If it is succeeding, if it is in Baton Rouge it is succeeding, New York, I would go to the Success Academy upstairs in the same building is where Success Academy is.

Downstairs is public. The biggest—the biggest disappointment of those kids and those same families, one knows they are going to be succeeding because they are a part of that lottery ticket, and the other know they are not going to succeed because they are going downstairs to a public school system that is going to guarantee their failure.

We need that focus on our outcome, focus on our kids, not the institution. Thank you guys, actually, for what you are doing. I appreciate particularly those in these communities that these kids have not had a chance in the past. Thank you, guys, so much for that, and I yield back.

Chairman BEAN. Thank you very much, Representative Owens. Let us go to the great State of California where the Chair of the Subcommittee of the Workforce is recognized. Representative Kiley, you are recognized.

Mr. KILEY. Thank you, Mr. Chair. Mr. Campbell, I want to ask you about the New Orleans experience because it is such an important case study that in the wake of Hurricane Katrina you had to rebuild the whole education system. New Orleans went 100 percent charter. Is that correct?

Mr. CAMPBELL. That is correct.

Mr. KILEY. What have the results been in terms of student achievement?

Mr. CAMPBELL. The results have been nothing short of remarkable. As we said, it was virtually a wasteland. It was one of the worst school districts in America prior to Hurricane Katrina. You look today and you actually see a vibrant school system.

It actually works very well. Contrary to what a lot of people said, the folks who started schools after Hurricane Katrina were education leaders who were already from New Orleans. It was not like there was some invading force that came in with all these charter schools.

The reality is we empower local educators who were already there, already operating schools, with a new way to be able to do it, that they have embraced and ran with and done phenomenal things with. Right now, if you look at our State, New Orleans again was always at the bottom. It is in the top tier in terms of school district performance, and top 40 percent.

There is no way you would have expected that in New Orleans when you look at the demographics of New Orleans. We have veteran educators who love New Orleans, who have lived there their entire lives, who are running great charter schools.

If you ask a person, they will tell you they will never go back. That is the reality of what is happening in New Orleans.

Mr. KILEY. New Orleans went from among the worst to among the best.

Mr. CAMPBELL. Yes.

Mr. KILEY. After going 100 percent charter?

Mr. CAMPBELL. Yes.

Mr. KILEY. We see in some parts of the country charter schools are under attack. One of the first things that the Biden administration Education Department did was propose cutting charter school grants. In California, a number of laws have been passed, and have been signed into law by the Governor, making it harder to open and to reauthorize charter schools.

In Los Angeles, Unified School District, the second largest district in the entire country, that we are proposing right now to significantly restrict the ability to operate charter schools. We have heard today, several just blatantly false statements about how charter schools work from our friends over there, as well as one of the democrat witnesses, who just blatantly mischaracterized the New Orleans experience.

What would your message be to those who are waging this war on charter schools when they have been shown to produce remarkable results?

Mr. CAMPBELL. I think the first thing we have to understand is that this is really about money and control, right? We can talk about all these other things performance, others, it is money and control. It is who gets to decide how kids are educated, where they are educated, and who gets to spend the money.

The fact is now we have a situation where all of a sudden it is not all housed in one district. There are other people who can say this is how we are going to spend our dollars. These are the results we are trying to achieve. For the first time, we have empowered poor families to say I do not like what is happening in this school, so I am going to take my money, and I am going to move and go somewhere else.

At the end of the day, as long as we are talking about money and power and control, you are always going to have this kind of contentiousness but let us not make it something else. It really is about money and power and control, and who has it and who does not.

Mr. KILEY. In other words, the attacks on charter schools are about putting politics over kids.

Mr. CAMPBELL. Absolutely.

Mr. KILEY. Dr. Raymond, I wanted to ask you briefly about the CREDO study because this is really the gold standard when it comes to measuring charter school success. I think you have results specifically from California as well, which is my State. Can you speak to that a little bit about how charters are done in California?

Ms. RAYMOND. I knew I would get a detailed question. Hang on just a second. Yes, thank you. In our charter school study of 2023, students in California charter schools were able to host 11 extra days of learning in reading, and four extra days of learning in math.

These are 1,300 charter schools across the State, so on average they are moving students forward faster than students in traditional public schools that are right down the street.

Mr. KILEY. Is it not interesting that the politicians in Sacramento see those results and decide these are precisely the schools that we need to go after, and to target, and make it more difficult to operate them? Thank you very much for your work, and thank you as well for your testimony, Mr. Campbell, and your work—the tremendous work that you are doing to provide opportunities to students.

The beauty of charters is that not only are they helping to close achievement gaps in districts that have historically struggled when it comes to student success, but you know, they also allow for just different options for different types of kids, and different types of families. In the area that I represent, we actually have some truly excellent traditional public schools, and then we also have some outstanding charter public schools that some families choose to opt into.

I want to thank the Chair for holding this hearing. I think it is very important that we continue to support the charter movement and to support successful charter schools and charter leaders. I think it is highly unfortunate that that cannot be as bipartisan as frankly it should be. Thank you, and I yield back to the Chair.

Chairman BEAN. Thank you very much, Chair Kiley. Let us go to the great State of North Carolina, where the Chair of the Education and Workforce is standing by. She is now recognized for questions. Representative Foxx, you are recognized.

Mrs. FOXX. Thank you, Chairman Bean. I want to thank our witnesses for being here today. Dr. Raymond, coming to you again, you mentioned that charter school results for students in urban areas, and for minority students are especially positive. Could you say something more about that?

I know you have done excellent research and have terrific numbers about this, so we would love to hear more about that.

Ms. RAYMOND. I love it when somebody asks me for more numbers, thank you.

Mrs. FOXX. Will you turn your mic on? I am not sure it is on.

Ms. RAYMOND. Yes, ma'am, it is on. Can you hear me now?

Mrs. FOXX. Okay.

Ms. RAYMOND. Urban students enrolled in charter schools learn an extra 30 days in a year's time in reading and 28 extra days of learning in math in a year's time compared to district students that they're matched with. For black students, those numbers are 35 extra days of learning in reading, and 29 extra days of learning in math.

Hispanic students, reading 30 extra days in reading for Hispanic students, and 19 extra days for Hispanic students in math. The poverty results are 23 extra days of learning in reading, and 17 extra days of learning in math. What this means is over a course of several years, students are making months and months and months of additional academic progress.

This means they are better prepared to graduate. They are better prepared for life after high school.

Mrs. FOXX. Which makes it again even more puzzling as to why policymakers do not want these students to have these opportunities. It is just maddening. Mr. Pondiscio, in the last few years we have seen parents in traditional public schools get silenced, excluded and shamed for simply wanting to be part of their children's education.

I think that is inexcusable. How can charter schools help ensure parents have a voice in their child's education?

Mr. PONDISCIO. The best schools, charter, public, privates alike, recognize the power of getting every adult on the same page so to speak, or pulling in the same direction. I think one of the potential benefits of charter schools is to encourage again, innovation, and create a more—a wider variety, an ecosystem if you like, of different school types.

With respect to my research-based colleagues, I focus on curriculum, on instruction, on school culture. If you think of the choices that an affluent American parent has at his or her disposal, depending on where they live of course, they likely have access to a classical school, a Montessori school, a project-based learning school.

They have, without controversy, unfettered access to make the best choice for his or her child. Imagine if we had a similar range of options for low-income families, where—and this should be the magic of chartering. Let us be honest, if there is a weak link in the

charter ecosystem, it is that we are not encouraging this robust flowering of different school models and cultures.

If we use the chartering process to create an equal system, a system that it was just as robust and diverse and had as many different options as well-off families have, well then you would more likely match parents and children to schools that match their interest, their values, et cetera.

That I think is the promise of chartering that is unfulfilled, but it is fulfillable.

Mrs. FOXX. Thank you very much.

Mr. Campbell.

Mr. CAMPBELL. Yes, ma'am.

Mrs. FOXX. We have heard a lot of concerns about how having too much red tape can stifle charter school flexibility and growth. As someone who has been involved in charter schools for several years, what kind of regulations could be eliminated without compromising charter effectiveness?

Mr. CAMPBELL. Yes. Honestly, ma'am, I do not know where to start, right? There are so many regulations, and I must say this is not only the case for our charter schools, this is for traditional public schools also. Like the amount of red tape that we throw at education is ridiculous.

I will give you a really quick story. In Louisiana, we passed a bill several years ago that would allow every kid to get \$1,000.00 in free tutoring. A report just came out last week that only 1 percent of eligible students were taking advantage of that. The reason was because we made the mandates for being a tutor so hard, like you had to be a retired teacher, you had to have so many hours of training, that we could not find enough teachers to do it.

Across the board, we are always bringing in additional mandates, cursive writing. You have to learn about this one little obscure thing. At the end of the day, let us set the outcomes and let us try to get out of the way. Let us take the handcuffs off. I mean we certainly want to protect kids. We want to protect families. Those things are really important.

I would argue our whole system is overly burdened by regulator red tape, and it certainly affects charters, which are supposed to be exempt from that.

Mrs. FOXX. Thank you very much. Thank you, Mr. Chairman, I yield back.

Chairman BEAN. Thank you very much, Chair Fox. Let us go to the great State of New York, where Representative Bowman is recognized. Good morning.

Mr. BOWMAN. Thank you so much, Mr. Chairman, and thank you to our witnesses for being here. Before I get into my questions, Dr. Vasquez Heilig, is there anything you want to clarify based on questions you may have been asked before I arrived?

Mr. VASQUEZ HEILIG. I would like to clarify. There is a lot of conversation about why CREDO's results are valid. I am really surprised that they are spending so much time trying to convince us that they are valid, which to me tells a story. Now, one of the things about being at Stanford was I was subjected to a lot of statistical torture in my graduate program.

I would like to talk a little bit about CREDO. Our understanding of that report, and only they really know, is that less than 40 percent of public school students are compared to more than 90 percent of charter school students. It is not really a comparison of charter schools and neighborhood public schools. It is a very—and she said carefully selected, and I want to underline selected.

It is really narrow subject groups, rather than actual samples, so I think that is very important to say. I do not think that we should cherry pick results about educational outcomes. They note in their report that they had issues with sampling, especially for Native American students, and ELL students, sub-50 percent, and their ability to match in those areas.

She talked about CMOs, and they decided to omit several states that have CMOs. Ohio, one of those. 78 percent of the charters in Ohio are CMOs, and one in every two is for-profit. I think it is important that I am just really surprised that they spent a lot of time trying to justify their methodology, and I think that is because of the last 14 or 15 years that scholars have had lots of critiques of their methodology.

Mr. BOWMAN. Thank you so much. As a former teacher, principal, and founder of a district run public school across New York City, I have also seen countless examples of the ways that charter schools can negatively impact traditional public schools, and often go against the wishes of local communities.

Dr. Vasquez Heilig, how do charters impact students in communities at traditional public schools, especially as it relates to things like funding, available space, and student enrollment? Can you say more about how, as you stated in your testimony, charters often fail to align with the broader community interests?

Mr. VASQUEZ HEILIG. Yes. I think this is a very important point, and I was able to make it briefly to the other gentleman. What is happening now is we are opening charters. We are offering opportunities of vouchers, et cetera. We are using the same educational dollars, and we are funding three separate systems, which is a very inefficient way of going about public education.

Now, we have examples from other countries. I will give you an example of Chile. Chile is a place where they have universal choice. What we see in those situations is that you have your great public schools in the nice neighborhoods. You have your other public schools where most of the lower achieving and low SES students go, and then you have some private schools where those voucher students go.

What these systems actually do is they promote stratification of students. You see less special ed students being served by charter schools. You see greater segregation. When we did our study on segregation, we looked at every single school in NCES.

We did not say here is 40 percent of neighborhood public schools. Here is 95 percent of charter schools. We looked at every single school in the NCES dataset and found that charters are more segregated. I think it is very important that we are attentive to these critiques, and that where the NAACP was coming from in 2016. There are significant critiques of charter schools, and I think charter school supporters could get a lot more people onboard if they would actually address the critiques, and they have not.

Mr. BOWMAN. Thank you and let us try to get this one in before the time runs out. Can you also discuss in more detail the harsh discipline practices that exist more often in charter schools than in traditional public schools, and how these practices disproportionately impact marginalized students, including students with disabilities?

I mean, I have seen kids thrown—just thrown out of the charter schools, the public schools cannot do that.

Mr. VASQUEZ HEILIG. Yes, yes.

Mr. BOWMAN. Get suspended for long periods of time, public schools cannot do that.

Mr. VASQUEZ HEILIG. Yes, yes.

Mr. BOWMAN. Can you say more about that, please?

Mr. VASQUEZ HEILIG. Yes. I think the big picture is that it really disturbs me that we spin these sort of negative aspects of charter schools, that we need to have these harsh discipline, no excuses charter schools. That it is Okay that charter schools close. That it is okay that we have lower quality teachers. That spin.

For me, as a former charter school instructor, I think of Gary. He reminded me a lot of myself, and I do not want to cry here, but he reminded me a lot of myself. He got into a little bit of trouble now and then, but one day he got into a little bit too much trouble, and the charter school kicked him out.

I came back 1 day, and Gary was not there, and it broke my heart. I just think about all the Gary's out there who charter schools have decided that they do not want to serve, and they want to send them back to our neighborhood public schools.

Mr. BOWMAN. Thank you so much, Mr. Chairman, I yield back.

Chairman BEAN. Thank you very much, Representative Bowman. Let us stay with the great State of New York where Representative Williams is recognized. Welcome, and good morning.

Mr. WILLIAMS. Good morning, Mr. Chairman, and thank you. Thank you to all of our witnesses for being here. I am an advocate for school choice. I believe that parents, not bureaucrats, make the best decisions for their parents, I am sorry—for their kids' success, and particularly for their education.

In my district, we are very fortunate to have some excellent public schools, and I commend those administrators and teachers and school boards that deliver excellence in their communities. I also have excellent charter schools, and they are usually located in the most disadvantaged communities in my district.

They are also very successful. They are wonderfully diverse. They are skillfully led, and they are in great demand. In fact, right now there are ten families waiting on a wait list just to get into kindergarten in their community charter school. Every year they have more applicants than seats available.

Dr. Vasquez Heilig, do you believe that charter schools cherry pick students to inflate positive academic results?

Mr. VASQUEZ HEILIG. Well, I think that I made a point earlier before you arrived, Congressperson.

Mr. WILLIAMS. It is a real easy question. Do you believe that charter schools cherry pick students?

Mr. VASQUEZ HEILIG. They have the ability to do that. Yes.

Mr. WILLIAMS. You believe they do?

Mr. VASQUEZ HEILIG. They have the ability to do that if they so choose.

Mr. WILLIAMS. You have on record for having said an option is that we can ban charter schools altogether in a September 2019 interview. Are you really considering banning all charter schools?

Mr. VASQUEZ HEILIG. Well, I think that—I do not think that we should ban all charter schools. I think all charter schools should be democratically accountable to the public.

Mr. WILLIAMS. Can you provide some context for me to understand your comment that an option is that we can ban charter schools altogether?

Mr. VASQUEZ HEILIG. Yes.

Mr. WILLIAMS. That sounds like banning charter schools, that is what it sounds like to me.

Mr. VASQUEZ HEILIG. Again, great question. I do not know the context of the comment? Do you know where that comment was made?

Mr. WILLIAMS. They are your words. I assume that you meant them when you said them.

Mr. VASQUEZ HEILIG. I do not know the context of the comments, but—

Mr. WILLIAMS. It is always context.

Mr. VASQUEZ HEILIG. I do believe that all charters should be democratically accountable.

Mr. WILLIAMS. Okay. Is it not your whole mission really just to avoid direct competition to local public schools? Is that really your mission?

Mr. VASQUEZ HEILIG. Sorry. I am a scholar, so my job is—

Mr. WILLIAMS. Well, scholars can have political objectives.

Mr. VASQUEZ HEILIG. My job—

Mr. WILLIAMS. Please do not interrupt me, sir. Thank you. Scholars can have political points of view, as we have all learned. I am educated in engineering, and engineers have political opinions. This is a very political issue. Is it not your whole mission simply to avoid direct competition to local public schools? Is that your mission?

Mr. VASQUEZ HEILIG. No.

Mr. WILLIAMS. That is not your mission? Mr. Campbell has pointed out that this is really about money, control and power. Mr. Campbell, you made some very compelling statements there. What is a good reason to ban charter schools altogether?

Mr. CAMPBELL. Sir, I could see no good reason to ban charter schools altogether. They are viable, they are popular with our families, and they are doing well. There is no reason to ban charter schools.

Mr. WILLIAMS. Well, we have scholars who are saying that that is a viable option. What animates and motivates that point of view? I am surprised to have heard it today?

Mr. CAMPBELL. I think sometimes there is a tendency to look at something that is not perfect, and to try to equate something else to it, to try and compare and contrast. We have had conversations today, and I have heard people talk about stratified schools. Our public school systems are stratified today, right?

The reason we have charter schools is to help those folks who are stuck where they are, and so you know again, it is not as if parents are leaving to go to charter schools because everything is perfect. They are leaving because of the challenges that are already there.

Now our public school system needs to be better, and our working in Baton Rouge, we support great schools regardless, Magnet, outside under a tree, whatever it is. If it works we are for it, and the reality is that too many of our schools do not work, and we need more schools that do.

Mr. WILLIAMS. It just seems that getting back to where I started—that putting power in the hands of parents, and letting them choose, like in my community where they are on a wait list for these wonderfully diverse schools that achieve just remarkable results, not at the exclusion of public schools. We have excellent public schools as well that dot my landscape.

Mr. CAMPBELL. Yes.

Mr. WILLIAMS. I am proud of both.

Mr. CAMPBELL. Yes.

Mr. WILLIAMS. This idea that to avoid direct competition of local schools, and perhaps even ban charter schools altogether as a scholarly option is absurd, and I appreciate you all for testifying here today. I yield back, Mr. Chairman.

Chairman BEAN. Thank you very much, Mr. Williams. Let us go to the great State of Louisiana, where Representative Letlow is recognized. Good morning, and you are recognized.

Ms. LETLOW. Thank you so much, Mr. Chairman, and thank you to all the witnesses for being here, especially my fellow Louisianan, Mr. Ken Campbell, from New Schools for Baton Rouge, for coming to testify in front of the Subcommittee.

Mr. CAMPBELL. Yes, ma'am.

Ms. LETLOW. I have previously visited Mr. Campbell's charter school operations and was so impressed by the educational innovation occurring at your schools, and how they are meeting the student's needs, and catering to their learning styles. It is no secret that I am a strong supporter of charter schools.

The charter school's program at the U.S. Department of Education, and in fact, last September, the Louisiana Department of Education was awarded 55.5 million in Federal CSP grants to support Louisiana's charter school movement. Over 5 years LDOE will support the addition of over 5,000 seats at 25 new, expanding or replicating the charter schools primarily located in failing school districts, including in rural areas, just like mine.

I am thrilled this grant will benefit our State, and ultimate our students. As I visited with the charter advocates, it has been increasingly clear how tedious and long the administrative process is for starting our new charters. To address these concerns, last November I introduced H.R. 6418, the Empowered Charter Schools Educators to Lead Act.

The bipartisan bill, which authorizes states who receive grants through the CSP, to use a portion of their funding to support the application process and development of new charter schools. These planning awards will help support experienced educators with at least 5 years of school-based experience to the charter school application process, and increase technical assistance opportunities for

them, including locating and accessing a facility for their new school.

It is my hope the Committee can consider my bill, so it can ensure high-quality perspective charter school applicants have the tools and assistance they need to successfully complete the process. My question is to you, Mr. Campbell. Can you share your experience with this Committee, including any red tape that you have encountered when opening new schools for Baton Rouge?

Then second, how could access to a planning grant and increased technical assistance, ease the way for additional charter schools to open in Louisiana and eventually across the country?

Mr. CAMPBELL. Yes, ma'am. Thank you and so pleased to, you know, kind of have you here, and good to see you today. For your piece of legislation, I think it is incredibly helpful. Starting a charter school is hard, as it should be, right? I was the authorizer for the State of Louisiana.

I am going to tell you right now to get over our bar to be able to start a school is incredibly hard. The reason it is hard is because serving kids is hard. Like this is not an easy endeavor. The hurdles that you have to overcome in order to be able to start a school are significant.

With the CSP grant, we are able to solve part of the challenge. We are able to get the money between the time their applications are approved, and the time their school opens, hire teachers by curriculum, furniture, all those sorts of things, and that is a wonderful use of the program.

The reality, however, is that I think stronger schools are made in the planning process. If we are able to get some money to educators sooner, to help strengthen their applications and their planning, it will be remarkable. For example, if you decided that you wanted to start a school for girls in STEM education, you might want to go visit two or three of those schools and take some people with you from around the country to see them, which ones are succeeding. Why are they successful? What is working really well?

These funds would allow you to be able to do stuff like that. The budget, the finance piece, you know, there has been a lot of talk about charters struggling with finance, and I think that is a real thing. Being able to get real support of people to help you put together a budget that is conservative, realistic, that allows your school to get started to be successful, would be tremendously helpful.

That is not a skill that everybody has. Things we can do to help strengthen planning, to help strengthen the applications I think will lead to stronger schools, and it is one piece that has been missing, and I am really encouraged about the possibility of being able to make that happen.

Ms. LETLOW. Thank you so much. Thank you for all that you are doing for Louisiana. You are changing the landscape of our State, and eventually the country. Thank you, Mr. Chairman, I yield back.

Chairman BEAN. Thank you very much, Representative Letlow. Let us go to the Commonwealth of Virginia, where the Ranking Member of the Education and Workforce is standing by. Representative Bobby Scott, you are recognized. Good morning.

Mr. SCOTT. Thank you, and good morning. We have heard a lot about questions about what happens when a school is failing. I just want to remind people that we updated the law in the Every Student Succeeds Act, to require that the lowest performing schools receive additional supports as a solution of addressing failing schools.

Dr. Vasquez Heilig, can you say a word about what sense it makes as a solution to a failing school to let a few students slip out the back door?

Mr. VASQUEZ HEILIG. Thank you so much. I would like to answer your question, and also correct the record on two places. The Congressman dropped and said I had called for a ban, but that was related to California's ban on for-profit schools. I just did a quick Google on that. Yes, I do believe that we should not be—we should not have for-profit-charter schools, so I want to make that clarification.

I think the second thing about the New Orleans conversation, we looked at the ACT, SAT data, the NAEP data, and Louisiana RSD has been last and nearly last for quite some time. I do not believe that deserved accolades. If there is new data that I have not seen since I published that brief, I am very open to seeing those New Orleans data.

Then finally, I think it is very important that we serve all students. All students that come to our door. That is what is great about public schools. Now, I understand the concerns about failing schools, and the—

Mr. SCOTT. Well, if you have a failing school, saying letting a few people slip out the back door, those have figured out what is going on, leaving everybody else in the failing school. That does not sound like much of a solution at all.

Mr. VASQUEZ HEILIG. No.

Mr. SCOTT. In fact, everybody, if you have a failing school, all of them would choose to leave. Then what happens?

Mr. VASQUEZ HEILIG. Yes. Not every parent has the option to take their kid all the way across a city or a neighborhood to a charter school that does not provide transportation. There are a lot of limitations to what parents are able to do. It is in our best interest to have in the neighborhood a strong public school.

Mr. SCOTT. The solution would be to improve the school, not let a few people slip out the back door?

Mr. VASQUEZ HEILIG. Yes.

Mr. SCOTT. Let me ask you another question. I have limited time.

Mr. VASQUEZ HEILIG. Yes.

Mr. SCOTT. You mentioned on school choice that it is not the student, but the school that is choosing, and said eligible for lottery. What did you mean by that?

Mr. VASQUEZ HEILIG. Yes. I mean I have been to kid's schools where they outline who is eligible for their lottery. Now I am not saying that all public schools cream and crop students, and so in the research literature you have Kevin Welner's work, there is a variety of ways that students are creamed and cropped. I will not go deeply into that.

There is well established research on how charter schools can change their populations, which makes the analyses that CREDO do very difficult because it biases their selective sample.

Mr. SCOTT. Even with all that bias, some charters are obviously better than others. On average, are charters better or worse than public schools?

Mr. VASQUEZ HEILIG. I do not think that conversation could be limited to just test scores, because most of the research that CREDO does, they take very small standard deviations and hundredths of standard deviation and create these days of learning. We also need to look at teacher quality, and teacher turnover, and discipline, and suspension rates.

We cannot just look at—

Mr. SCOTT. What is the effect of teacher quality, pay, inexperience, and turnover of teachers in charter schools?

Mr. VASQUEZ HEILIG. Yes. We have looked at the success of teachers in terms of teacher quality. When you have a stronger teacher, it means better student achievement. There has been folks that have looked at well, is it okay if we have great teachers come in and they leave very quickly?

There is very little research that establishes that is a good idea.

Mr. SCOTT. Well, do charter schools have better pay, turnover and experience with teachers, or worse than public schools?

Mr. VASQUEZ HEILIG. They have worse turnover, worse teacher quality, in some cases better pay.

Mr. SCOTT. Can you say a brief word about the disciplinary policies? If a kid gets expelled from a charter school, where do they go?

Mr. VASQUEZ HEILIG. Sure. Well, they are going to have to go back to their neighborhood public school. Charters in many states can reject students because of prior disciplinary issues.

Mr. SCOTT. Then, Dr. Campbell, the city of Baton Rouge got significant funding under the American Rescue Plan Act. Do you know what the public schools did with that money that they were able to do because of that money to address learning loss?

Mr. CAMPBELL. Sir, first of all, it is Mr. Campbell, do not confuse me with the good folks down here. Yes. Yes. I think much of that funding went into real high-quality interventions for kids. We rapidly expanded, or greatly expanded high dosage tutoring for students, which I think is very powerful.

We increased the number of math and literacy coaches in our schools. We were able to use some of that funding to expand early childhood education. I do think that in the State of Louisiana, city of Baton Rouge, rescue funds have been used by things that have made a difference.

Mr. SCOTT. Well, did it make a difference?

Mr. CAMPBELL. Yes, sir.

Mr. SCOTT. Thank you.

Chairman BEAN. Ranking Member Scott, thank you very much. We are nearing the end of our journey, but before we adjourn, let us yield to the Ranking Member Bonamici for her final thoughts.

Ms. BONAMICI. Thank you very much, Mr. Chairman. Thank you to our witnesses. It has been an important discussion today. Every student deserves a high-quality education that will prepare them for success. As we have heard, not all charter schools provide students with a quality education.

When we consider all students, nor do they deliver the same educational outcomes that our traditional public schools could. Cer-

tainly, they are not a panacea for the challenges facing students today. As we heard, poorly regulated charter schools often have poor academic outcomes, and leaves students with no recourse when their rights are violated.

I want to followup on Ranking Member Scott's comments about the conversation, the questions regarding so-called failing schools. As we know, under No Child Left Behind, a failing school was used—a term used to describe schools where the students have lower test scores.

As those of us who were here in 2015 and worked on the Every Student Succeeds Act, as Ranking Member Scott clarified, we asked those questions. What does that mean to have low test scores? Maybe we need to ask a question, what does that school need? Why are the students not getting higher test scores?

In fact, we changed that so that no longer are test scores used as punitive measures to label schools as failing. We put in the Every Student Succeeds Act that those schools should probably have more resources, right? Why are the students failing?

Do they need smaller classes? Is there lead in the water? Are they hungry? All those questions. Where do we put the resources to help every student? I wanted to point that out because the term failing schools is really one where we have to question. A school is a building. What is happening with the students inside of it?

I also want to take strong exception to the suggestion that this is about money. I find that personally offensive as a Member of Congress, as someone who cares deeply about every student, to suggest that I might have questions about charter schools because of money.

We care, not only about the students whose parents say wow, I need to look at a charter school option for my child. We care also about the students whose parents are maybe a single parent household. Maybe they are stressed. Maybe they do not know about other options. Maybe they do not know how to get involved.

To say that we only care, and that we want to provide a good education to those who want to leave the traditional public schools, I find to be inappropriate, and I just want to get that on the record that we should be here. We care about every student and want every student to have a good education.

Calling for unchecked expanded access to charter schools that lack meaningful accountability, while continuing to underfund our already overwhelmed traditional public education system is not in the best interest of students. It is not in the best interests of parents, and it is certainly not in the best interest for the future and for our economy.

I know on my side of the aisle, I will continue to fight for a strong quality public education system that protects and supports every child, not just those with involved parents who are looking for an alternative. We do not, as Ranking Member Scott said, we do not want to just leave everybody else behind.

We would need to say what can we do to give them a great education, so with that Mr. Chairman, I yield back, and thank you. I look forward to continuing the conversation.

Chairman BEAN. Thank you very much, Ranking Member Bonamici. Here are my four takeaways. One, charter schools have

high levels of academic achievement, and as we have heard during this hearing charter students, on average, learn more reading and math than their peers in traditional public schools.

The fact is it is especially important when we know parents across the country are looking for better academic options. No. 2, charter schools are open to innovation, as Robert pointed out. Innovation is there, we have heard testimony that charter school autonomy can enable teachers to pioneer fresh teaching methods, encourage schools to develop better personnel practices and equip schools to innovate in curriculum.

All of this can happen because charter schools are not burdened by the regulations and contracts that restrict traditional public schools. Three, charter schools can provide a lifeline, as Mr. Campbell pointed out, to the most disadvantaged students.

While there are some traditional public schools that provide a good education, we know that many students sometimes can be trapped when it is not the best option for them. We should keep trying to improve public schools, but we are going to try to improve charter schools too.

We realize that charters can provide a vital lifeline to students where there are no other good options. Everyone benefits when families have high-quality educational opportunities to choose from. Four, I have got three kids. They all learn differently. Every kid is different.

To give them just one choice I think is not the best way to go. Everybody learns different, and maybe it is a charter school, maybe it is the public school, maybe it is a Magnet school. Maybe home schooling. I do not know, but everybody is different. We recognize that, and I think that is what we recognized today.

Finally, to our witnesses, let me tell you what I did. You saw me, I promised a very innovative, invigorating, robust discussion. I did set the bar high for you but let me tell you what you did. You exceeded expectations. Thank you so much for participating.

This, as Ranking Member Bonamici has said, we will continue this conversation as we embark on a journey to make American schools the best they possibly can be. With that, if there is no further—

Mr. SCOTT. Mr. Chairman.

Chairman BEAN. Yes. Ranking Member Scott, you are recognized.

Mr. SCOTT. The notice of consent requests that I would like to enter into the record, a letter from the Network for Public Education about charter schools and a report by the National Council on Disability entitled “Choice and Vouchers—Implications for Students with Disabilities.”

Chairman BEAN. Without objection, so ordered, and thank you so much. There being no further business to come before the Committee, we stand adjourned.

[Whereupon at 12:01 p.m., the subcommittee was adjourned.]



POLICY BRIEF

A Closer Look: Examining the Impact and Effectiveness of Online Charter Schools

James Woodworth, Ph.D.
Margaret E. Raymond, Ph.D.
Won Lee, Ph.D.



CREDO Policy Briefs aim to provide succinct research summaries on topics of interest to policy makers, educators, and the general public. This brief draws from *As a Matter of Fact: The National Charter School Study III*, which can be found at ncss3.stanford.edu.

Topic overview

One of the most contentious debates about public schools in the United States focuses on online schools. Their unconventional structure and instructional practices challenge many notions of educating primary and secondary public school students.

Many online schools operate as charter schools. This gives them considerable autonomy from typical regulations. In exchange, they agree to a limited-term contract and regular performance reviews that may place conditions on them or end their continuation.

In many parts of the country, there is a lively debate about whether online charter schools should be classified in a way that distinguishes them from site-based charter schools. To date, no state legislation has moved to create such a distinction, though, in some instances, legislation has been amended to create different discretion or requirements for online charter schools.

Similarly, any research on the performance of charter schools must consider whether to include or exclude online charter schools. Online charter schools are included in CREDO's *As a Matter of Fact: The National Charter School Study III* for several reasons. First, online charter schools are seven percent of the charter school sector and have grown in popularity. As such, it is essential to evaluate their effectiveness and impact.

Second, online charter schools, like traditional brick-and-mortar charter schools, operate under

an agreed contract of operating discretion in exchange for responsibility for performance. They receive public funding and are accountable for meeting specific educational outcomes. Including online charter schools in the analysis allows for a comprehensive assessment of the charter school sector as defined in law today.

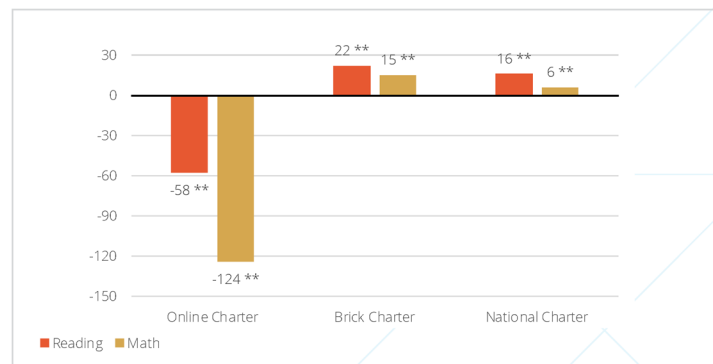
However, authorizers of online charter schools face unique challenges in evaluating these schools. Students in online settings are dispersed around a state, typically in their homes. This makes normal regulating activities such as site visits impossible. Additionally, such basic educational practices as classroom observations may not be possible for online programs where students take classes asynchronously to fit their unique needs, which may be the reason families chose online education in the first place. This means while online charter schools may be held to the same charter bargain of flexibility for accountability, how accountability for online charter schools is addressed will have to look different from the typical brick-and-mortar charter school.

Additionally, including online charter schools in the analysis provides valuable insights into the effectiveness of online education as a mode of instruction. With technological advancements, online learning has become increasingly prevalent, and understanding its effectiveness in different contexts is crucial for improving educational outcomes.



What does the evidence say?

The performance of online charter schools is more varied than might appear from the aggregate findings. The picture is exceptionally bleak when the performance of all students enrolled in online charter schools is analyzed. The chart below shows the average one-year learning of online charter school students compared to their matched peers in traditional public schools. We adjusted the average academic growth for the matched peers to zero for comparison purposes. On average, online charter school students progress by 58 fewer days of learning in a year in reading and 128 days fewer days of learning in math. Put another way, in a 180-day school year, the typical online student makes two-thirds of a year of progress in reading. In math, they make only a third of a year of progress in a year of schooling.



The chart includes the results for all charter schools in our study and the results for the students attending brick-and-mortar charter schools. These figures clearly make the difference in average student learning across the two settings. Further, the degree to which online schools' performance impacts the national picture is also apparent. Despite enrolling only six percent of the nation's charter school students, the results for student learning in online charter schools are so negative that they diminish the sector's performance by six days in reading and nine days in math.

There is more to the performance story, however. It is easy to think the average online charter school impact applies to all students, but that would be incorrect. There are substantial numbers of students benefiting from attending online charter schools. Over one-third of students who attend online charter schools have positive gains relative to their matched TPS peers; however, the remaining two-thirds overwhelm those gains.

Similar – though smaller -- differences exist when discussing online charter school education at the



school level. Of the 135 online schools in our study, just two online charter schools have significantly stronger school-wide results than their TPS comparison in reading, and one school does so in math. As a share of all online charter schools, these are rounding errors. Another quarter of the schools have similar results to TPS in reading, and 10 percent are equivalent in math. While these are minor shares of the whole set, these schools figured out how to leverage the model to benefit students. Unfortunately, these schools are in the company of the 73 percent of schools with worse performance than TPS in Reading and the 90 percent who under perform in math.

To summarize the findings, learning for most students in online charter schools is far less than they would have realized either in their local TPS settings or in other brick-and-mortar schools. Against that dominant result, about one-third of enrolled online charter school students fare better than they would have in their local options. Those high-performing students are spread across all the online charter schools, making up a small fraction of every online charter student body. Speculating if most schools have a share of their students performing well, these school operators may think it sufficient to prove the value of the model. Almost certainly, these are the students on display for marketing and recruiting new students.

Policy considerations

Our findings inform policy considerations in the near and long term. In both cases, the predominant concern is the academic welfare of the students attending online charter schools. The analysis clearly shows educational harm for many students in the short term. The magnitude of the learning shortfall far exceeds any reasonable tolerance for parent preferences or model development. If these were medical trials, they would face termination forthwith.

Online charter school operators face existential risk in the short run unless they deliver two things. The first is better guidance for parents and students to grasp better whether the option aligns with their educational aims. It is fair to stress that some students do well in each school, but a significant knowledge gap persists about the successful match between student and program characteristics. This may require new data and analysis to reveal the conditions that favor positive academic performance. Monitoring provider transparency would also help.

The second is a plan of corrective action that they will use to address the staggering learning shortfalls of the students in each school who lose critical

learning while in their school. Authorizers have a role in holding all charter schools, especially the lowest performing ones, accountable for performance. Part of that scheme should be remedies and ongoing support.

The longer-run policy questions focus on the tension between the current performance landscape and the future opportunities for evolving online education offerings in more productive forms. There is a real risk that the current set of online charter school operators might permanently damage any appetite for online schooling. Without swift changes to strategy and execution, they could run themselves off the proverbial cliff.

It is critical to the model's future that the select few online charter schools delivering solid learning for their students have protection and encouragement to replicate and evolve. By using their autonomy to design and deliver successful new educational approaches, they embody the upside of the overall charter school bargain.

 credo





The Honorable Aaron Bean
Chair
Subcommittee on Early Childhood,
Elementary, and Secondary Education

The Honorable Susan Bonamici
Ranking Member
Subcommittee on Early Childhood,
Elementary, and Secondary Education

March 19, 2024

RE: National Association of Charter School Authorizers Statement for the Record, U.S. House of Representatives Committee on Education and the Workforce, Subcommittee on Early Childhood, Elementary and Secondary Education hearing on "Proven Results: Highlighting the Benefits of Charter Schools for Students and Families", March 6, 2024

Dear Chair Bean, Ranking Member Bonamici and Members of the Subcommittee on Early Childhood, Elementary, and Secondary Education:

In the wake of the recent hearing titled "Proven Results: Highlighting the Benefits of Charter Schools for Students and Families," we, the National Association of Charter School Authorizers (NACSA), are grateful for the opportunity to submit this statement for the record to the House Subcommittee on Early Childhood, Elementary, and Secondary Education. NACSA advances and strengthens the ideas and practices of authorizing so students and communities—especially those who are historically under-resourced—thrive. We are a non-profit, non-partisan organization with a 20-year history of promoting best practices in charter school oversight and accountability. We believe that for charter schools to play a vital role in providing better public schools: 1) Quality authorizing is essential. 2) Authorizers must ensure access, autonomy, and accountability. And 3) Authorizers must be responsible for the overall performance of their portfolios of schools.

Respectfully, we are providing additional research for the committee to consider in regard to current accountability and financial management practices that exist in the authorizing and charter school sectors.

Charter school policy is designed to provide rigorous monitoring and oversight through multiple layers of accountability. This includes standard oversight by state educational agencies (SEA), as well as adherence to state and federal laws and academic standards. Unique to the charter sector, charter school authorizers add an additional layer of oversight for public charter schools. Charter school authorizers are required to approve and renew only those charter schools that have demonstrated they can improve student performance in a fiscally and organizationally sound manner. Additionally, charter schools face closure for non-compliance or underperformance, a level of scrutiny that is often beyond that of traditional public schools.



Relatedly, as public schools, charter schools are held accountable for their finances by state law, the LEA oversight process, the SEA oversight process, and by the authorizer. Though public reporting laws vary by state, charter schools in every state are required to be financially transparent. Including nearly every state requiring charter school authorizers to report on the performance of its portfolio of schools through an annual report or other mechanisms. 27 states require authorizers to produce annual reports that cover finance and a host of other school quality/school health topics that provide the public with transparent information. The other states generally require details about school financial health at regular intervals.

NACSA has also conducted extensive analysis on charter school closure rates, which shows that the rate of closure has decreased, especially among large authorizers. Historically the closure rate is less than 13%, and in the most recent year (21-22), the closure rate was fewer than 5%.¹ An analysis of historical data also offers that the rate of closures has never reached 25%², contrary to claims made in publications by other organizations.

While our specific focus relates to charter school oversight, we share the commitment of many in education to ensuring that every type of school—charter, magnet, and traditional—has the resources and support needed to provide a high-quality education to all the students they serve. Such an education ecosystem allows families to select schools that best meet their children's needs, driven by a shared goal of fostering educational excellence across diverse communities. Public charter schools, as integral parts of this ecosystem, demonstrate a commitment to responsiveness and accountability to the communities they serve, reinforcing the importance of choice and the pursuit of quality education for every student.

We appreciate the committee's attention to our statement and remain dedicated to engaging in constructive dialogue to support the improvement and success of all public schools.

Sincerely,

M. Karega Rausch
President & CEO
NACSA

¹ <https://qualitycharters.org/authorizing-applications-and-closures/>

² <https://qualitycharters.org/policy-research/inside-charter-school-growth/closings/>



House Committee on Education and Workforce
Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
Hearing - "Proven Results: Highlighting The Benefits Of Charter Schools For Students And Families"
Wednesday, March 6, 2024- 10:15 AM

Chairman Bean and distinguished members of the Subcommittee on Early Childhood, Elementary, and Secondary Education,

The National Parents Union (NPU) appreciates the opportunity to submit this statement for the Congressional Record in support of high-quality public charter schools. As an organization committed to advocating for the needs and interests of families in education, we firmly believe that charter schools play a crucial role in providing innovative and community-driven educational options for students and families across the country as part of the public school system.

In our rapidly changing global economy, equipping our children with the skills and knowledge necessary for economic mobility cannot be overstated. Charter schools are often at the forefront of educational innovation, offering programs that are closely aligned with the demands of the 21st-century workforce, including STEM education, critical thinking, and problem-solving skills.

The National Parents Union believes that providing families with access to new and innovative public school options, such as charter schools, is essential in equipping the next generation of children. Charter schools have demonstrated their ability to innovate and foster community-designed improvements in education. In addition, charter schools empower communities to create learning environments tailored to the specific needs and aspirations of their children. By providing flexibility in curriculum, teaching methods, and school culture, charter schools can effectively address the diverse needs of students and families.

Charter schools also have a proven track record of delivering results for students. Research has shown that charter school students often outperform their peers in traditional public schools. Moreover, charter schools provide access to high quality education opportunities for families who are seeking high-quality educational opportunities that best meet their children's needs.

It is imperative to ensure that every school, including charter schools, are held accountable for delivering meaningful and measurable results for students and adequately preparing them for the future. Accountability measures are essential for assessing the effectiveness of ALL educational institutions in fulfilling their mission of providing high-quality education to all students. By holding schools accountable, we can ensure that they are meeting rigorous standards of academic achievement, fostering positive learning outcomes, and equipping students with the knowledge, skills, and competencies necessary to succeed in college, career, and beyond. This commitment to accountability promotes transparency, encourages continuous improvement, and ultimately serves the best interests of students, families, and communities.

The National Parents Union strongly supports high-quality public charter schools and their ability to innovate and foster community-designed improvements in education. We urge policymakers to continue to support policies that promote the growth and expansion of charter schools, including fully funding the Charter Schools Grants Program and encouraging flexibility in the program to ensure that all students have access to the high-quality education they deserve.

To discuss this topic more deeply with the National Parents Union, please contact Ariel Taylor Smith, Senior Director of Policy and Action, ariel@npunion.org.

